

Exhibit AL

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3 IN RE: : MDL NO.:

JOHNSON & JOHNSON TALCUM : 16-2738 (MAS)(RLS)

4 POWDER PRODUCTS :

MARKETING, SALES :

5 PRACTICES, AND PRODUCTS :

LIABILITY LITIGATION :

6
7 - - -

8 Wednesday, July 10, 2024

9 - - -

10 Remote videotaped deposition of PAUL
11 HESS, via Zoom video conference, conducted at
12 the location of the witness in Atlanta,
13 Georgia, taken on the above date, beginning at
14 approximately 9:06 a.m., before Jessica M.
15 Gericke, RPR, CCR-NJ, and Notary Public in and
16 for Delaware, New Jersey, and Pennsylvania.

<p>Page 2</p> <p>1 APPEARANCES VIA ZOOM VIDEO CONFERENCE: 2 BOVIS, KYLE, BURCH & MEDLIN, LLC BY: ERIC LUDWIG, ESQUIRE 3 200 Ashford Center North Suite 500 4 Atlanta, GA 30338-2668 678-338-3925 5 eludwig@boviskyle.com (Present with Witness) 6 Counsel for Deponent and Materials 7 Analytical Services 8 BEASLEY, ALLEN, CROW, METHVIN, 9 PORTIS & MILES, P.C. BY: P. LEIGH O'DELL, ESQUIRE 10 218 Commerce Street Montgomery, AL 36104 11 334-269-2343 leigh.odell@beasleyallen.com 12 (Present with Witness) 13 Counsel for Plaintiff Steering Committee 14 COHEN, PLACITELLA & ROTH 15 BY: CHRISTOPHER M. PLACITELLA, ESQUIRE DREW M. RENZI, ESQUIRE 16 127 Maple Avenue Red Bank, NJ 07701 17 732-747-9003 cplacitella@cpirlaw.com 18 Counsel for Plaintiff Steering Committee 19 20 21 22 23 24 25</p>	<p>Page 4</p> <p>1 APPEARANCES (continued): 2 ALSO PRESENT: 3 SPECIAL MASTER JOEL SCHNEIDER 4 CAROLIN De La ROSA, VIDEOGRAPHER 5 SHU-CHUN SU, PH.D. 6 - - - 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 3</p> <p>1 APPEARANCES (continued): 2 ASHCRAFT & GEREL, LLP BY: MICHELLE A. PARFITT, ESQUIRE 3 1824 K Street NW Washington, DC 20006 4 202-669-0032 mparfitt@ashercraftlaw.com 5 Counsel for Plaintiff Steering Committee 6 REILLY, McDEVITT & HENRICH, P.C. 7 BY: BRANDY L. HARRIS, ESQUIRE 8 3 Executive Campus Suite 310 9 Cherry Hill, NJ 08002 856-317-7180 10 bharris@rmh-law.com 11 Counsel for Personal Care Products Council 12 KING SPALDING, LLP 13 BY: MORTON D. DUBIN, II, ESQUIRE KEVIN HYNES, ESQUIRE 14 JAKE KEESTER, ESQUIRE 1185 Avenue of the Americas 15 34th Floor New York, NY 10036 16 212-790-5343 mdubin@kslaw.com 17 Counsel for Defendant Johnson & Johnson 18 FAEGRE DRINKER BIDDLE & REATH LLP 19 BY: SUSAN M. SHARKO, ESQUIRE 20 600 Campus Drive Florham Park, NJ 07932 21 973-549-7000 susan.sharko@faegredrinker.com 22 Counsel for Defendant Johnson & Johnson 23 24 - - - 25</p>	<p>Page 5</p> <p>1 INDEX 2 WITNESS NAME PAGE 3 Paul Hess 4 By Mr. Dubin 6 5 6 - - - 7 8 EXHIBITS 9 NO. DESCRIPTION PAGE 10 1 Resume of Paul M. Hess 8 11 2 MAS Report, dated 20 February 24, 2020 12 3 MAS Report, dated February 22 13 1, 2019 14 4 Hess Slide 2 46 15 5 MAS Report, dated September 58 16 16, 2020 17 6 MAS report, dated February 64 17 24, 2020 18 7 Declaration of William 69 Longo, Ph.D. 19 8 Hess Slide 20 70 20 9 Hess Slide 22 74 21 10 Hess Slide 24 76 22 11 Hess Slide 25 81 23 12 J3 Resources Inc. Report, 83 24 dated July 13, 2018 25</p>

<p style="text-align: right;">Page 6</p> <p>1 INDEX (continued):</p> <p>2 13 MAS Report, dated April 13, 87 2021</p> <p>3</p> <p>4 14 MAS Report, dated February 91 28, 20</p> <p>5 15 Hess Slide 34 105</p> <p>6 16 Su Tables 108</p> <p>7 17 Hess Slide 43 110</p> <p>8 18 Hess Slide 127</p> <p>9 19 Hess Slide 134</p> <p>10 20 Image, CX-00056 137</p> <p>11 21 CX-00012 143</p> <p>12 22 Hess Slide 48 143</p> <p>13 23 Image, CX-00062 147</p> <p>14 24 Image, CX-00019 164</p> <p>15 25 Image, CX-00029 169</p> <p>16 26 William E. Longo, Ph.D., 176 Deposition Transcript, dated March 22, 2024</p> <p>17</p> <p>18 27 Hess Slide 95 178</p> <p>19 ---</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 have received from you or at least I assume it</p> <p>2 originated with you and we'll just call that</p> <p>3 up and walk a little bit through your</p> <p>4 employment background.</p> <p>5 MR. DUBIN: Jake, can we call</p> <p>6 that up, please?</p> <p>7 (Exhibit 1 marked for</p> <p>8 identification.)</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. So it looks like you joined MAS in</p> <p>11 December of 1995; is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Can you tell me very briefly</p> <p>14 what this position was that you held before</p> <p>15 that at Law Associates?</p> <p>16 A. PLM microscopist.</p> <p>17 Q. And what was -- what is or was Law</p> <p>18 Associates?</p> <p>19 A. They were an engineering firm in</p> <p>20 Atlanta, Georgia.</p> <p>21 Q. Okay. Do you know why it has "law"</p> <p>22 in the name?</p> <p>23 A. I have no idea.</p> <p>24 Q. Okay. Does that have anything to do</p> <p>25 with something legal or is it just -- was it</p>
<p style="text-align: right;">Page 7</p> <p>1 ---</p> <p>2 VIDEOGRAPHER: We are now on</p> <p>3 the record. My name is Carolin De La Rosa, a</p> <p>4 videographer for Golkow Litigation Services.</p> <p>5 Today's date is July 10, 2024, and the time is</p> <p>6 9:06 a.m. This deposition is being held in</p> <p>7 the matter of Talcum Powder litigation MDL</p> <p>8 2738 versus Johnson & Johnson. The deponent</p> <p>9 today is Paul Hess.</p> <p>10 All parties to this deposition</p> <p>11 are appearing remotely and have agreed for the</p> <p>12 witness to be sworn in remotely. All parties</p> <p>13 are noted on the stenographic record this</p> <p>14 morning.</p> <p>15 Would the court reporter,</p> <p>16 please, administer the oath to the witness.</p> <p>17 ---</p> <p>18 PAUL HESS, after having been</p> <p>19 first duly sworn, was examined and</p> <p>20 testified as follows:</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. Hi, Mr. Hess. Good morning.</p> <p>23 A. Good morning.</p> <p>24 Q. So we're going to make the first</p> <p>25 exhibit to your deposition a resume that I</p>	<p style="text-align: right;">Page 9</p> <p>1 somebody's name? You have no idea?</p> <p>2 A. No idea, sir.</p> <p>3 Q. Okay. And then it looks like you</p> <p>4 departed MAS in August of 2008 for a fairly</p> <p>5 short period and went to Long Brothers Oil &</p> <p>6 Gas; is that right?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. And then you went back to MAS</p> <p>9 and you were there until February of 2023, as</p> <p>10 a full-time employee, before leaving for a</p> <p>11 brief period of a year where you were just a</p> <p>12 consultant; is that right?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. And then your current</p> <p>15 employment status at MAS is what?</p> <p>16 A. Part-time.</p> <p>17 Q. Okay. And looking through your</p> <p>18 resume, it looks like you have a bachelor's of</p> <p>19 science degree; is that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. You don't have any further advanced</p> <p>22 degrees, right, no master's and no Ph.D.?</p> <p>23 A. No, sir.</p> <p>24 Q. Okay. I am sorry. Sometimes it can</p> <p>25 be confusing.</p>

<p style="text-align: right;">Page 10</p> <p>1 It's correct you do not have a 2 master's or a doctorate; is that right? 3 A. That is correct. 4 Q. Thank you. All right. So we may go 5 through some of that in more depth later, but 6 what is -- what positions have you held over 7 time at MAS? 8 A. PLM microscopist. 9 Q. I have heard you referred to 10 sometimes as an analyst. 11 Is that the name of your 12 position, is PLM microscopist the name of your 13 position or what's the formal name of your 14 position? 15 A. To the best of my knowledge, it's 16 PLM microscopist. 17 Q. Okay. That's fine. And are you 18 represented by counsel today? 19 A. I am. 20 Q. Okay. And is that your personal 21 counsel? Was it provided to you by MAS? 22 A. Provided by MAS. 23 Q. Okay. And it says here that you 24 have 34 years experience as a PLM 25 microscopist, analyzing an average of 10,000</p>	<p style="text-align: right;">Page 12</p> <p>1 You have only become involved 2 in litigation work within the last few years; 3 is that right? 4 A. That is correct. 5 Q. Okay. And since becoming involved 6 with litigation work, about what percentage of 7 your time or your work at MAS relates to 8 litigation -- is related to litigation? 9 MR. LUDWIG: Objection to form. 10 You can answer. 11 THE WITNESS: I would say the 12 majority of the time. 13 BY MR. DUBIN: 14 Q. Can you explain to me when and how 15 you started to become involved with litigation 16 work? 17 A. I do not recall the exact year, but 18 Dr. Longo asked me to start taking a look at 19 amphiboles in talc samples. 20 Q. And so you started -- they asked you 21 to take a look by PLM for amphiboles in talc 22 samples; is that right? 23 A. That is right. 24 Q. Okay. Did you have any discussion 25 at that time about whether you should also</p>
<p style="text-align: right;">Page 11</p> <p>1 samples per year. 2 When you say that, are most of 3 the samples asbestos samples or is that a 4 variety of different types of PLM work? 5 A. Most of those were standard asbestos 6 samples. 7 Q. Okay. And so is it correct to say 8 that your general job duties at MAS is just 9 PLM microscopy? 10 A. That is correct. 11 Q. Do you do any other type of 12 microscopy work at MAS? 13 A. I had done some phase contrast. 14 Q. No transmission electron microscopy; 15 is that right? 16 A. No, sir. 17 Q. Okay. And do you know approximately 18 what percentage of your time at MAS is spent 19 performing work related to litigation? 20 MR. LUDWIG: Objection to form. 21 BY MR. DUBIN: 22 Q. You can respond. 23 A. Just the last few years. 24 Q. Okay. So let me make sure I 25 understand what you're saying.</p>	<p style="text-align: right;">Page 13</p> <p>1 look for chrysotile? 2 A. Not that I recall. 3 Q. Okay. Did you ask why you were only 4 being -- being asked to look for amphiboles at 5 that time? 6 A. Not that I recall. 7 Q. Okay. When you typically perform a 8 PLM analysis, let's say, before you became 9 involved in this litigation work, when you 10 were examining a sample, would you typically 11 look for both chrysotile and for amphiboles? 12 A. In the standard samples, that is 13 correct. 14 Q. So you -- when you first became 15 involved with looking at, let's say, talcum 16 powder samples, why didn't you continue to 17 follow that protocol and look for both 18 amphibole and chrysotile? 19 MR. LUDWIG: Objection to form. 20 THE WITNESS: At that time it 21 was basically just for the amphiboles. I was 22 not asked to look for the chrysotile. 23 BY MR. DUBIN: 24 Q. Okay. And at some point you were 25 asked to start looking for chrysotile in</p>

<p style="text-align: right;">Page 14</p> <p>1 cosmetic talc samples; is that right?</p> <p>2 A. I was asked to see what I could find</p> <p>3 other than the amphiboles.</p> <p>4 Q. Okay. And do you recall when</p> <p>5 approximately that was?</p> <p>6 A. I do not recall.</p> <p>7 Q. Prior to becoming involved with</p> <p>8 litigation work in the last several years, had</p> <p>9 you ever previously examined talc, whether</p> <p>10 industrial or cosmetic, for the presence of</p> <p>11 asbestos by PLM?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. When was the first time you</p> <p>14 recall being involved with the testing of talc</p> <p>15 at MAS, irrespective of whether it was</p> <p>16 cosmetic or industrial?</p> <p>17 MS. O'DELL: Would you repeat</p> <p>18 the question, please?</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Sure. When was the first time you</p> <p>21 recall becoming involved with the testing of</p> <p>22 talc for asbestos at MAS, irrespective of</p> <p>23 whether it was cosmetic talc or industrial</p> <p>24 talc?</p> <p>25 A. As I recall, it was somewhere around</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Ceiling tiles, joint compounds,</p> <p>2 roofing, putties, floor tiles. A whole</p> <p>3 spectrum of different types of building</p> <p>4 materials.</p> <p>5 Q. And so do you recall being able to</p> <p>6 identify chrysotile by PLM in products such as</p> <p>7 joint compounds and floor tiles?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And do you know what type or types</p> <p>10 of chrysotile asbestos -- well, let me ask you</p> <p>11 a different question.</p> <p>12 Do you recall any of the brand</p> <p>13 names of the joint compounds that you looked</p> <p>14 at?</p> <p>15 A. I don't recall any brand names being</p> <p>16 given by the clients that sent the samples in.</p> <p>17 Q. Do you know whether any of those</p> <p>18 joint compounds or floor tiles would have</p> <p>19 contained Calidria asbestos?</p> <p>20 A. Not that I recall; however, I did at</p> <p>21 one point come to the understanding that</p> <p>22 Calidria had been used in some of the floor</p> <p>23 tiles.</p> <p>24 Q. Okay. And you were able to identify</p> <p>25 chrysotile in those floor tiles using PLM?</p>
<p style="text-align: right;">Page 15</p> <p>1 2018.</p> <p>2 Q. Have you looked at both industrial</p> <p>3 and cosmetic talc by PLM for the presence of</p> <p>4 asbestos?</p> <p>5 A. I don't recall industrial.</p> <p>6 Q. Okay. Do you recall when the first</p> <p>7 time was that you used -- and we'll talk more</p> <p>8 about what this means -- but a 1.550</p> <p>9 refractive index oil to examine talc,</p> <p>10 irrespective of whether it's cosmetic or</p> <p>11 industrial talc?</p> <p>12 A. 1.550 has always been the oil used</p> <p>13 since doing standard things or standard</p> <p>14 samples, I should say.</p> <p>15 Q. So over -- but do you recall when</p> <p>16 the first time you used that oil to examine</p> <p>17 talc was?</p> <p>18 A. I don't recall exactly.</p> <p>19 Q. Okay. You indicated before -- we</p> <p>20 talked about the fact that you had experience</p> <p>21 as a PLM microscopist looking at many</p> <p>22 different samples over your career.</p> <p>23 Can you tell me what type or</p> <p>24 types of asbestos-containing products you</p> <p>25 recall examining by PLM over your history?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes, sir.</p> <p>2 Q. All right. We'll talk a little bit</p> <p>3 more about that later.</p> <p>4 Are you the -- how many PLM</p> <p>5 analysts have -- during the time you have been</p> <p>6 there, have typically been employed by MAS?</p> <p>7 A. I do not know exactly how many.</p> <p>8 Q. Were there others besides you?</p> <p>9 A. There were.</p> <p>10 Q. Okay. Let's say within the last</p> <p>11 three years, how many other PLM analysts do</p> <p>12 you recall working at MAS?</p> <p>13 A. One other besides myself.</p> <p>14 Q. And who was that?</p> <p>15 A. That was Christopher Dubois.</p> <p>16 MR. LUDWIG: Mr. Dubin, can I</p> <p>17 ask you a question? Are you finished with the</p> <p>18 resume? Because it's still up on the screen.</p> <p>19 I didn't know if you were --</p> <p>20 MR. DUBIN: We can pull it down</p> <p>21 for now; that's fine.</p> <p>22 BY MR. DUBIN:</p> <p>23 Q. And was that individual trained in</p> <p>24 PLM dispersion staining analysis?</p> <p>25 A. Yes, sir.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Was there anything about his 2 training that would lead you to believe he 3 wasn't trained to look for chrysotile by PLM? 4 MR. LUDWIG: Objection to form; 5 calls for speculation. 6 BY MR. DUBIN: 7 Q. To your knowledge. 8 A. I do not recall. 9 Q. Okay. We'll come back to some 10 background later, but what did you do to 11 prepare for your deposition today? 12 A. I had a few sessions with 13 Mr. Ludwig. 14 Q. Anything else? Did you speak to 15 anybody else in preparation for your 16 deposition? 17 A. Ms. O'Dell. 18 Q. Okay. How about Dr. Longo? 19 A. Dr. Longo has been very busy the 20 last couple of weeks or so and I have not had 21 an opportunity to sit down and talk with him. 22 Q. Okay. Did you review any materials 23 to prepare for your deposition? 24 A. I did review the reports by Dr. Su 25 and Dr. Wylie.</p>	<p style="text-align: right;">Page 20</p> <p>1 number is CX-6 for pulling it up. It's a 2 report, dated February 24, 2020, related to 3 Zimmerman, the Zimmerman report. 4 (Exhibit 2 marked for 5 identification.) 6 BY MR. DUBIN: 7 Q. I don't know that you -- whether you 8 personally recall. 9 Do you recall this being the 10 first time you looked at cosmetic talc from 11 Johnson & Johnson by PLM for the presence of 12 chrysotile? 13 A. I don't recall. 14 Q. Okay. We'll look at that report 15 some, but before I do that, I want to look at 16 something else. 17 Did you become aware at some 18 point that the FDA had reported a positive 19 finding for chrysotile by TEM in a bottle of 20 Johnson & Johnson? 21 MR. LUDWIG: Objection to form. 22 Just for the record, Mr. Hess 23 is a fact witness that we produced because of 24 Court Order. He is not here to opine on 25 expert issues or hearsay issues.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. Did you review any of your 2 own PLM analysis? 3 A. I did not go back over and review 4 any of the PLM analysis. 5 Q. How are you compensated at MAS? Are 6 you a salaried employee? 7 A. Currently, I am hourly. 8 Q. Okay. How about before you -- 9 before you took the recent break and became a 10 consultant? Were you salaried at that time? 11 A. I was. 12 Q. Do you -- in your current structure, 13 do you receive bonuses? 14 A. No, sir. 15 Q. How about before, when you were a 16 salaried employee? Did you receive bonuses? 17 A. A long time ago the company used to 18 have an annual bonus that they would give out, 19 but that has not been in place for many years. 20 MR. DUBIN: Okay. I'm going to 21 mark as the next exhibit -- and start to get 22 into a little bit of substance -- what I 23 understand to be the first report that MAS 24 issued claiming to find chrysotile by PLM, and 25 that will be exhibit 2, internal reference</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. DUBIN: I don't know what 2 you're saying, but I am sure I disagree with 3 it. So let's just see how it goes with 4 individual questions. Because I am definitely 5 going to be asking him about his work. 6 MR. LUDWIG: You're asking 7 about FDA analysis and so I am going to object 8 to the form. 9 MR. DUBIN: Okay. Well, you 10 can object if you like, but you can respond. 11 Thank you. 12 BY MR. DUBIN: 13 Q. Did you become aware of that at some 14 point? 15 A. I am aware of that. 16 Q. Okay. Do you recall how you became 17 aware of that? 18 A. I don't recall exactly. 19 Q. Do you recall ever reporting 20 chrysotile in any Johnson & Johnson talc 21 samples prior to that FDA finding? 22 A. I do not. 23 Q. Now, what -- what type of refracted 24 index oil would you use traditionally to look 25 for fibrous talc by PLM?</p>

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1 A. 1.550.
2 Q. Would there be any difference in
3 your prep method in the way that you would
4 have traditionally looked for fibrous talc
5 versus chrysotile asbestos in 1.550?
6 A. It would be no different in method
7 of preparation.
8 Q. It makes no difference to the method
9 of preparation? Is that what you said?
10 A. No. I said there is no difference
11 in preparation between the two types of
12 analyses.
13 Q. All right. And so I want to ask you
14 about another report before we go forward, one
15 that was issued before Zimmerman; that will be
16 exhibit 3. It's a February 1, 2019 report
17 entitled: MAS Second Supplemental Report.
18 Let's pull that up for a second.
19 (Exhibit 3 marked for
20 identification.)
21 BY MR. DUBIN:
22 Q. This is a report that was issued by
23 MAS prior to the FDA finding.
24 It's entitled: An Analysis of
25 Johnson & Johnson Historical Product

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1 Containers and Imerys' Historical Railroad Car
2 Samples from the 1960s to the early 2000s, for
3 Amphibole Asbestos, and if we --
4 MS. O'DELL: Morty, could you
5 put the whole document on the screen so it can
6 be seen? I am only seeing the first part.
7 MR. DUBIN: I mean, I am going
8 to move around the document. We can try to
9 adjust so you can see the full size.
10 Can you see it now?
11 MS. O'DELL: Yes. If you can
12 maybe make it a bit bigger? Because I am
13 looking for the date on that because I can't
14 see it.
15 MR. DUBIN: It's dated February
16 1, 2019.
17 MS. O'DELL: Thank you.
18 BY MR. DUBIN:
19 Q. And if we go to page 2, you can see
20 here that it relates to 72 J&J and
21 Imerys-supplied historical cosmetic talcum
22 powder containers, samples, and samples from
23 the 1960s, 1970s, 1980s, 1990s, and early
24 2000s.
25 Do you see that? I can

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1 highlight it.
2 MS. O'DELL: If you can't see
3 it, Dr. -- excuse me. If you can't see it,
4 Mr. Hess, please let us know.
5 MR. DUBIN: Jake, can you put
6 these things in chat, too?
7 MR. PLACITELLA: Well, I want
8 the opportunity to look at the document before
9 you start asking questions about it.
10 MR. LUDWIG: I mean, the report
11 speaks for --
12 MR. DUBIN: (Inaudible.)
13 MR. LUDWIG: -- themselves --
14 indicating one question or -- so the whole
15 thing speaks for itself, Paul. I guess his
16 only --
17 MR. DUBIN: Okay. This is a
18 long speaking objection, it's improper, and I
19 am going to -- I am trying to show him things
20 to be able to ask him a question about it.
21 We can put these things in
22 chat, but I am not pausing at every question
23 to wait for you to read a 100-page report. So
24 that's just not happening. We're going to --
25 MS. O'DELL: Well, it will

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1 happen if the witness needs it, Morty, and
2 we'll go off the record if he needs --
3 MR. DUBIN: I haven't -- I
4 haven't asked a single question yet, other
5 than whether he sees it. So we're not at --
6 MS. O'DELL: Morty, I am not
7 finished and you can let me finish.
8 It's not fair to put a document
9 on the screen without giving him the
10 opportunity to see it. Thank you for putting
11 it in the chat. He can pull it down in the
12 chat and they will be printed if needed --
13 MR. DUBIN: (Inaudible.)
14 MS. O'DELL: -- examination.
15 You could have sent the
16 documents in hard copy had you chosen. You
17 didn't do that; that's fine. We'll work
18 around that, but he needs the opportunity to
19 review the document.
20 MR. DUBIN: If you guys want to
21 go off record, he can read each time. I am
22 not using my time to have him read a whole
23 report when I haven't been able to ask a
24 single question about it.
25 So if you want to go off, off

<p style="text-align: right;">Page 26</p> <p>1 record, and have him read the whole report, I 2 am happy to let him do that, or I can direct 3 him to the portions that I am going to ask 4 about. You choose. Because we can be here 5 all night. I don't care. So you tell me. 6 MR. LUDWIG: We're not going to 7 off the record, no. It sounds like -- 8 MR. DUBIN: It is not going on 9 my time if he wants to read a 50-page document 10 that I haven't been able to ask a single 11 question about yet. This is not happening. 12 So you want to go off the 13 record and have him read this report or you 14 want me to ask him questions and then the 15 witness can tell me if there is something he 16 needs to read. 17 Those are your two options. 18 MS. O'DELL: You don't -- 19 MR. PLACITELLA: The third 20 option is -- the third option is we're going 21 to call the Special Master. Because we have a 22 right to know what's in the document -- 23 MR. DUBIN: It's in the 24 document -- 25 MR. PLACITELLA: -- before you</p>	<p style="text-align: right;">Page 28</p> <p>1 get the Judge on the phone -- 2 MR. DUBIN: -- get the Judge on 3 the line, we can get the Judge on the line. 4 Go ahead. Go ahead. 5 MR. PLACITELLA: Let's get the 6 judge on the phone. 7 MR. DUBIN: Fine. 8 THE COURT REPORTER: Would you 9 like to go off the record for a moment? 10 MR. DUBIN: Sure. We'll go off 11 the record. 12 VIDEOGRAPHER: The time is 13 9:32 a.m. We are off the record. 14 (Brief recess.) 15 (Conference with Special Master 16 Joel Schneider taken off the video 17 record.) 18 THE COURT: Am I looking at the 19 infamous Paul Hess? 20 THE WITNESS: You are, sir. 21 THE COURT: Mr. Hess, I have 22 read so much about you. I am delighted to 23 meet you in person. 24 MS. O'DELL: Judge Schneider, 25 here is the issue that we're facing and I</p>
<p style="text-align: right;">Page 27</p> <p>1 ask the question. So if that's how we're 2 going to proceed, by picking pieces of a 3 document that he hasn't seen for years and I 4 have never seen before, then we've got to get 5 the Judge on the phone now. 6 MR. DUBIN: Okay. We can do 7 whatever you want. You guys have been 8 complaining about this without me asking a 9 single question about the document. The 10 witness hasn't said he needs to look at 11 anything else. You're just being 12 obstructionists. I am going to -- 13 MR. PLACITELLA: Well, let's 14 get the Judge on the phone. 15 MR. LUDWIG: He has not 16 reviewed the MAS reports. So -- 17 MR. DUBIN: This is his work. 18 I am asking him about his work. 19 MS. O'DELL: This is the report 20 of Dr. Bill Longo and Mark Rigler. This is -- 21 so -- 22 MR. DUBIN: With his PLM work. 23 I am not arguing about it anymore. I am 24 asking the questions. If you want to -- 25 MR. PLACITELLA: Well, let's</p>	<p style="text-align: right;">Page 29</p> <p>1 invite Mr. Placitella to add if I don't cover 2 something, but as you know, Mr. Hess is a fact 3 witness, he is not an expert, and he has done 4 work at MAS Lab for purposes of Dr. Longo 5 rendering his expert opinion. 6 He is being shown reports by 7 Dr. Longo and Rigler. He has not -- this 8 is -- he has no involvement in the preparation 9 of the reports. His work is an underlying 10 analyst and we object to Mr. Hess being 11 examined on the full scope of Dr. Longo's 12 reports, which are not his work. 13 And so we believe -- we just 14 got started a bit ago. We think this is going 15 to be sort of the mode of the deposition and 16 we need direction from the Court as to how 17 this should be approached. 18 MR. DUBIN: Just so I can -- 19 MR. PLACITELLA: Could I 20 supplement that? 21 MS. O'DELL: Please. 22 MR. PLACITELLA: So my concern, 23 your Honor, is as follows. These are reports 24 from other cases. The witness either has 25 never seen them before or hasn't seen them for</p>

<p style="text-align: right;">Page 30</p> <p>1 many years.</p> <p>2 Questions are being asked about</p> <p>3 these reports that we have not been supplied</p> <p>4 in advance of the deposition. Sticking them</p> <p>5 in the chat now on a 30-page report from</p> <p>6 another case doesn't give counsel even an</p> <p>7 opportunity to determine whether the questions</p> <p>8 are taken out of context, are fair or even</p> <p>9 relevant. So we're not even in a position to</p> <p>10 phrase our objections appropriately.</p> <p>11 If they wanted to ask questions</p> <p>12 about these reports, they should have been</p> <p>13 sent long in advance of the deposition and we</p> <p>14 could have had a debate about it then, not</p> <p>15 now, when now they are going to claim every</p> <p>16 time Mr. Hess has to stop and look at the</p> <p>17 report, that somehow that counts -- it doesn't</p> <p>18 count on their time for completing this</p> <p>19 deposition.</p> <p>20 It's an unfair way to proceed.</p> <p>21 It was never contemplated by the Court and I</p> <p>22 am at a loss as to how to even address these</p> <p>23 circumstances. I mean, this is a tenuous</p> <p>24 deposition at best and now we're taking it</p> <p>25 into a whole different realm, which is</p>	<p style="text-align: right;">Page 32</p> <p>1 Counsel, go ahead. Now I know.</p> <p>2 MR. DUBIN: So I haven't even</p> <p>3 asked him a single question basically</p> <p>4 substantively yet before they decided that</p> <p>5 they needed to approach the Court. All I had</p> <p>6 done was put up one report and then I was</p> <p>7 trying to orient him on what samples we were</p> <p>8 talking about and then I was going to ask</p> <p>9 him -- because he did the PLM work for that</p> <p>10 report -- and I was going to ask him about the</p> <p>11 conclusions and the work that he did.</p> <p>12 And I made the entire report</p> <p>13 available for counsel and I even offered if</p> <p>14 they wanted to go off record and have the</p> <p>15 witness read the entire report if he felt it</p> <p>16 was necessary, but I didn't even get to ask a</p> <p>17 single question.</p> <p>18 Of course, they don't -- they</p> <p>19 didn't even wait to see what the examination</p> <p>20 was about other than, "Do you see here? This</p> <p>21 was about 72 samples of talc," and then they</p> <p>22 objected and we got the deposition shut down.</p> <p>23 So I don't really know what</p> <p>24 their complaint is. I am making materials</p> <p>25 available to him. I am asking him about the</p>
<p style="text-align: right;">Page 31</p> <p>1 completely unfair to counsel and the witness.</p> <p>2 MR. DUBIN: If I could briefly</p> <p>3 respond. Your Honor, I haven't asked --</p> <p>4 THE COURT: One second.</p> <p>5 MR. DUBIN: Sure.</p> <p>6 THE COURT: You represent the</p> <p>7 defendants, I assume?</p> <p>8 MR. DUBIN: Yeah.</p> <p>9 THE COURT: Who are who?</p> <p>10 MR. DUBIN: I am Morton Dubin.</p> <p>11 THE COURT: With what firm?</p> <p>12 MR. DUBIN: I am with King &</p> <p>13 Spalding.</p> <p>14 THE COURT: And Mr. Hess is</p> <p>15 physically where?</p> <p>16 MR. DUBIN: He is in Atlanta.</p> <p>17 THE COURT: And is</p> <p>18 Mr. Placitella and Ms. O'Dell, are they both</p> <p>19 in their office or are they with Mr. Hess?</p> <p>20 MS. O'DELL: I am with the</p> <p>21 witness, Judge, in Atlanta.</p> <p>22 THE COURT: Okay.</p> <p>23 MS. O'DELL: Mr. Placitella is</p> <p>24 in New Jersey.</p> <p>25 THE COURT: Okay. All right.</p>	<p style="text-align: right;">Page 33</p> <p>1 work that he personally did, not about</p> <p>2 anything else in the report, and so I don't</p> <p>3 see what the objection is. It's a legitimate</p> <p>4 scope of inquiry.</p> <p>5 THE COURT: Can I ask a</p> <p>6 question? In the case, is there a deposition</p> <p>7 protocol that requires the production</p> <p>8 beforehand of exhibits that are going to be</p> <p>9 shown to a witness?</p> <p>10 MS. O'DELL: There is a</p> <p>11 deposition protocol and, your Honor, I do</p> <p>12 believe that we mainly follow that, just to be</p> <p>13 clear, more for an expert witness. There has</p> <p>14 been a three-day disclosure rule; that's not</p> <p>15 been followed in the instance of Mr. Hess</p> <p>16 since his deposition is a little bit more</p> <p>17 unique.</p> <p>18 And so, Judge, let me just also</p> <p>19 make clear, you know, as you know, in the</p> <p>20 first round in the multi-district litigation,</p> <p>21 the expert report that was at issue was the</p> <p>22 February 1, 2019 expert report involving</p> <p>23 historical samples that tested for amphibole</p> <p>24 asbestos; that's the report that was at issue</p> <p>25 in the Daubert hearing.</p>

<p style="text-align: right;">Page 34</p> <p>1 Dr. Longo has had a two-day 2 deposition on that report. Dr. Rigler was 3 examined. Dr. Longo was examined before Judge 4 Wolfson at the Daubert hearing and the Court 5 issued a ruling allowing the analysis from 6 that report. 7 What Mr. Dubin -- 8 MR. DUBIN: If I can -- 9 MS. O'DELL: -- Mr. Dubin put 10 up is the February 1, 2019 material, and as 11 you are so well aware, what's been at issue in 12 the proceedings since they have been restarted 13 in the MDL are new things and there are 14 reports that have been disclosed by Dr. Longo 15 that relate to the analysis of talc for 16 chrysotile involving PLM. 17 And that is -- for those 18 reports that have been disclosed, to the 19 degree Mr. Hess was involved and worked on the 20 underlying analysis, we understand the Court 21 has allowed this deposition and that we'll go 22 forward, but for the defendants to try to go 23 back, replot 2019 round in a report that's not 24 involved is not fair. 25 For them to inquire of things</p>	<p style="text-align: right;">Page 36</p> <p>1 regarding this new method; that's the first 2 thing. 3 The second thing is, the 4 deposition was only limited to Mr. Hess' 5 personal involvement. Because the defendants 6 were making the argument -- not in these 7 words, but, in essence, that it was Mr. Hess 8 that was making these ultimate decisions and 9 not Dr. Longo. 10 So the questions have to be 11 limited to only what Mr. Hess did, his tests, 12 his personal observations. The deposition is 13 not to get Mr. Hess' opinion on what somebody 14 else did or what somebody else opines. 15 Mr. Hess is there to testify 16 about his firsthand personal knowledge about 17 these -- this new testing method; that -- that 18 is precisely why Mr. Hess' deposition was 19 permitted. It was not permitted to go over 20 ground that was covered previously in the 21 case, the TEM tests, if I am -- 22 MR. DUBIN: Right. 23 THE COURT: -- right or any of 24 the tests before this new method. 25 And if I remember right, I am</p>
<p style="text-align: right;">Page 35</p> <p>1 that he wasn't involved in, including the 2 actual text of the report, is not fair. His 3 work was the bench work and the 4 photomicrographs and to go beyond that, we 5 believe, is objectionable and we ask the Court 6 to not allow it. 7 THE COURT: Can I jump in here? 8 Because I am very familiar with the issues. 9 And the reason why leave was granted to the 10 defendants to take Mr. Hess' deposition was 11 based on the arguments that they made in their 12 briefs. 13 Ms. O'Dell is correct that the 14 subject matter of the deposition should only 15 be limited to what I call -- and I'm not quite 16 sure if the defendants used this word -- this 17 new method. And if I remember right, even in 18 my decision I set forth -- there was, like, a 19 date range, if I remember right. I don't have 20 it in front of me. It started in 2020 and 21 maybe went to 2024. 22 And I specifically remember 23 there was an exhibit that may have been 24 duplicated in different versions that set 25 forth precisely the tests that were at issue</p>	<p style="text-align: right;">Page 37</p> <p>1 obviously aware that Judge Wolfson had 2 stricken some of the tests in the original 3 Daubert opinion, and I think that the argument 4 is going to be that with this new method, it 5 was not subject to the old order and, 6 presumably, it will be the subject of a new 7 Daubert order. 8 But those parameters of why 9 Mr. Hess' deposition was permitted, those 10 should be the parameters of this deposition. 11 I hope that helps. 12 MR. DUBIN: We don't disagree 13 with that at all. The report I am asking him 14 about is the first time that he is using this 15 specific method to examine Johnson & Johnson, 16 as I will show when I go to the report. 17 In that report he begins to use 18 1.550 oil for the first time, which is the way 19 he is looking for chrysotile. In that report 20 is the first time that he starts to do that 21 and look at Johnson & Johnson. 22 And so that was what I was 23 going to ask him about, is about his personal 24 work using that method at that time, which 25 leads then into the first reports for</p>

<p style="text-align: right;">Page 38</p> <p>1 chrysotile. 2 And so this is all about that 3 topic. I am not going into the TEM work. I 4 am not going into the PLM work that he did for 5 amphibole. 6 I am just asking him about this 7 kind of analysis that is the subject of the 8 entire deposition and this report, but I 9 didn't even get to get a single question in 10 before we ended up having to call your Honor, 11 I suppose. 12 THE COURT: Counsel, what you 13 were going to ask Mr. Hess about, is that one 14 of the tests that was on that list that 15 hopefully you know what I was referring? 16 MR. DUBIN: Your Honor, I will 17 go ahead and just explain to everybody, 18 although I really feel like I should be able 19 to ask the witness these questions, but what 20 we're going to see is that at this point, 21 before -- so at some point the FDA finds by 22 TEM chrysotile in one bottle of Johnson & 23 Johnson and after that time MAS starts to 24 report chrysotile by PLM basically every time 25 they look at it.</p>	<p style="text-align: right;">Page 40</p> <p>1 lay this as a foundation from the prior report 2 when some of that work was not his first is 3 improper and we object to that. I mean, the 4 2019 report is off the table. 5 MR. DUBIN: I am only asking -- 6 MR. PLACITELLA: I would just 7 add to that, to be fair to everyone, you know, 8 popping a report up that's X period of -- no 9 one has looked at for four or five years, you 10 know, in this context and start asking 11 questions, it's just not proper. 12 We have -- we can't -- we don't 13 know the context. He has taken little lines. 14 He has highlighted one line or two lines in a 15 report and then says, Well, we put the report 16 in chat. Go, have it. 17 Well, that's not fair. The 18 deposition today is supposed to be about the 19 report here at issue, nothing beyond that 20 report, and that's the -- I don't know what 21 else is coming; that's why we stopped it. 22 Are they going to pull out some 23 other report from some other case? I don't 24 know, but we've got to have some parameters of 25 what we're doing here.</p>
<p style="text-align: right;">Page 39</p> <p>1 What we're going to see is in 2 this report they're -- it's before the FDA 3 finding, they are using the exact same 4 methodology to look at the talc, and they do 5 not report chrysotile. 6 THE COURT: Counsel, what I'm 7 just concerned about is, you can ask him about 8 the tests using the new method. You can't -- 9 the purpose of the deposition is not to say, 10 Why did this person not find chrysotile and 11 you found chrysotile? 12 Ask him about his tests and 13 what he did and how he did it. 14 MR. DUBIN: He did the work on 15 both. I am asking about his work. 16 MS. O'DELL: Your Honor, we 17 would object. This is the 2019 report. It 18 was for amphiboles. Much of that work was not 19 done at MAS, it was done by another lab, and 20 so we object as that was fully covered by the 21 last proceedings. 22 For the new material, as the 23 Court has said, for his work, if they want to 24 ask him about it and ask him what oil he used, 25 that's fair game, but to go back and somehow</p>	<p style="text-align: right;">Page 41</p> <p>1 THE COURT: Counsel, I am 2 persuaded by plaintiffs' argument. Really, 3 this shouldn't be that difficult an issue. 4 The boundaries of this deposition were set 5 forth in the requests and my Order. 6 It's just about the tests that 7 he did, how he did it, his observations. He 8 is not there to answer questions about why did 9 they get the result in a 2019 test and a 10 different result in a later test; that's not 11 why he is there. 12 He is there to talk from his 13 personal observation about the new test; 14 that's it. 15 MR. DUBIN: But I just -- all I 16 am asking him about is his own work, doing it 17 the exact same way, why he came to a 18 conclusion -- different conclusion one time 19 versus the other, his own personal PLM work. 20 I am not asking him about 21 anybody else's work, asking him to offer 22 opinions about anybody else's work. I am just 23 asking him about what he did. 24 THE COURT: Counsel, if it's 25 not one of the tests on this exhibit list that</p>

<p style="text-align: right;">Page 42</p> <p>1 I referred to -- I know I referred to it 2 during oral argument. I don't recollect if I 3 referred to it in my decision. 4 If it's not one of those tests, 5 it's off limits. That's not the purpose of 6 the deposition. 7 MR. DUBIN: I am only asking 8 him about his PLM work in 1.550 and 1.560, 9 which is his chrysotile -- method for looking 10 for chrysotile, which is the subject of the 11 deposition. I'm not asking anything about any 12 PLM work. 13 THE COURT: Counsel, I don't 14 have that exhibit, that list in front of me, 15 but I have a feeling you know what I am 16 referring to, it would -- I believe it was an 17 exhibit to the two reports that the defendants 18 submitted. 19 And, you know, one of the 20 arguments for why the exception was denied was 21 because those experts prepared detailed 22 reports rebutting the plaintiffs' experts and 23 in those reports they attached as exhibits the 24 list of the samples that are at issue 25 regarding this new method. That's it. That's</p>	<p style="text-align: right;">Page 44</p> <p>1 Mr. Hess is only going to testify about his 2 personal observations. To me that's pretty -- 3 the boundaries are pretty clear. So I don't 4 know what else I can say. 5 MR. DUBIN: I understand, your 6 Honor. Again, I believe I am trying to stay 7 within that by asking him about his personal 8 observations of this material in 1.550 and 9 1.560 oil, but I understand. I will skip this 10 report. 11 I would like to be able to ask 12 him about differences in his images. Because 13 one of the big topics here is images. If they 14 decide to try to shut it down later when I do 15 it, I guess we'll take it up then, but we'll 16 see. I need to understand how -- what his 17 microscope setups are and whether he is 18 changing them and the like. 19 THE COURT: As long as it's 20 limited to the specific tests at issue that 21 are on that exhibit list. The exhibits are 22 attached to your expert reports, Counsel. So 23 you should have those at your fingertips. 24 Those were the tests that were 25 in the motion that the argument was that new</p>
<p style="text-align: right;">Page 43</p> <p>1 it. Those are the tests at issue. 2 MR. DUBIN: I understand that, 3 your Honor, and that's why as part of asking 4 about those conclusions, I need to understand 5 what changed between the two times he looked 6 at this with 1.550 oil to understand his 7 conclusions. 8 THE COURT: Well, if you're 9 asking about that, my ruling would be that's 10 off limits; that's not the purpose of this 11 deposition, not to compare old tests to new 12 tests. 13 The purpose of this deposition 14 is to ask him about his personal observations 15 regarding the new test; that's what was in the 16 defendant's papers. They didn't say anything 17 about asking him to compare old to new. 18 That's my ruling. If the 19 defendants think the questioning is going out 20 of those boundaries, instruct the witness not 21 to answer. We'll look at the transcript and 22 we'll make a ruling on a more fulsome record, 23 but I don't know what else I can say, Counsel. 24 It really should be a pretty 25 easy deposition. You have the tests at issue.</p>	<p style="text-align: right;">Page 45</p> <p>1 method was used and they found chrysotile 2 where they didn't previously find it; that's 3 the boundary of this deposition. Okay. 4 So I am in a mediation today, 5 but if you need me, send me an e-mail or a 6 text, and when I am available, I will get back 7 on the Zoom. Thank you, Counsel. 8 MS. O'DELL: Thank you, your 9 Honor. 10 MR. LUDWIG: Thank you, Judge. 11 MR. DUBIN: So we'll keep that 12 as an exhibit, as a proffer for the record. 13 (Break held off the record.) 14 VIDEOGRAPHER: The time is 15 10:17 a.m. We are back on the record. 16 BY MR. DUBIN: 17 Q. In terms of your background, when 18 did you start performing PLM dispersion 19 staining analysis? 20 A. 1989. 21 Q. That was when you took the course at 22 McCrone? 23 A. That is correct. 24 Q. Can you tell me a little bit about 25 that course? How long did it last? What were</p>

<p style="text-align: right;">Page 46</p> <p>1 you trained in?</p> <p>2 A. It lasted a week.</p> <p>3 Q. Okay.</p> <p>4 A. And we were trained to utilize the</p> <p>5 dispersion staining method to identify the</p> <p>6 various asbestos forms or minerals.</p> <p>7 MR. DUBIN: And if we can call</p> <p>8 up Hess slide 2. I will make a copy of it</p> <p>9 exhibit 4.</p> <p>10 (Exhibit 4 marked for</p> <p>11 identification.)</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. And do you know what this is that</p> <p>14 we're looking at here in the image?</p> <p>15 A. Well, it's stated on the matrix,</p> <p>16 reference chrysotile.</p> <p>17 Q. And when you taught -- took the</p> <p>18 course at McCrone, were you taught that</p> <p>19 chrysotile should look magenta in parallel?</p> <p>20 A. We were.</p> <p>21 Q. And are you aware that McCrone has</p> <p>22 studied different types of chrysotile,</p> <p>23 including Calidria?</p> <p>24 MR. LUDWIG: Objection to form.</p> <p>25 THE WITNESS: I am not aware of</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. KEESTER: Sorry, Morty.</p> <p>2 It's hard to print a single slide while</p> <p>3 we're -- I'm showing it.</p> <p>4 MR. DUBIN: Okay. Again, we'll</p> <p>5 put them in chat so that you have them later,</p> <p>6 but I don't want to take them off screen while</p> <p>7 we're doing this. It's a single slide. You</p> <p>8 can see it on the screen.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. All right. So --</p> <p>11 MS. O'DELL: We can't see it.</p> <p>12 Mr. Hess would, please, request a copy.</p> <p>13 BY MR. DUBIN:</p> <p>14 Q. The next step after you have made a</p> <p>15 judgment about what color you're looking at is</p> <p>16 to figure out what wavelength of light that</p> <p>17 is, right?</p> <p>18 A. That is correct.</p> <p>19 Q. And then you use some tables to</p> <p>20 convert that into a refractive index?</p> <p>21 A. That is correct. We used Dr. Su's</p> <p>22 tables.</p> <p>23 Q. And then, ultimately, those numbers</p> <p>24 can be used to derive a birefringence number,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 47</p> <p>1 what Dr. McCrone or what McCrone had studied.</p> <p>2 MS. O'DELL: (Inaudible.)</p> <p>3 MR. DUBIN: That would be</p> <p>4 exhibit 4.</p> <p>5 MS. O'DELL: Would you, please,</p> <p>6 download it in the chat?</p> <p>7 MR. DUBIN: Sure. Just, Jake,</p> <p>8 whenever we do exhibits, let's just put them</p> <p>9 in chat.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. And so we'll walk through just so we</p> <p>12 can understand the basic process of dispersion</p> <p>13 staining.</p> <p>14 The first step after you have</p> <p>15 put the slide -- prepared the slide and put it</p> <p>16 on the microscope, the first step is for the</p> <p>17 analyst to make a judgment about what color</p> <p>18 they are seeing, right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And then after you make a</p> <p>21 judgment about what color you're seeing --</p> <p>22 MR. DUBIN: Jake, there is some</p> <p>23 weird stuff on the screen. Can you take that</p> <p>24 off screen, please, or just put the slide</p> <p>25 back?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And can you define for me</p> <p>3 what an alpha refractive index is?</p> <p>4 A. That would be your length slow --</p> <p>5 length fast direction.</p> <p>6 Q. Okay. How about a gamma refractive</p> <p>7 index? Do you know what a gamma refractive</p> <p>8 index is?</p> <p>9 A. That would be your length slow</p> <p>10 direction. It's -- normally for chrysotile,</p> <p>11 that would be parallel.</p> <p>12 Q. Okay. Can your alpha refractive</p> <p>13 index ever be higher than your gamma</p> <p>14 refractive index?</p> <p>15 A. Only if a mineral is negative in</p> <p>16 elongation.</p> <p>17 THE COURT REPORTER: Can you,</p> <p>18 please, repeat the answer.</p> <p>19 THE WITNESS: Only if the</p> <p>20 mineral is negative in elongation.</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. All right. What does the refractive</p> <p>23 index of a mineral measure?</p> <p>24 A. It measures, basically, the</p> <p>25 difference in the light path as it passes</p>

<p style="text-align: right;">Page 50</p> <p>1 through the oil and particle edge. They</p> <p>2 interface.</p> <p>3 Q. What properties of a mineral</p> <p>4 determine its refractive index?</p> <p>5 A. Generally, the chemical, density.</p> <p>6 Q. Anything else?</p> <p>7 MR. LUDWIG: Objection to form.</p> <p>8 THE WITNESS: I don't recall</p> <p>9 off the top of my head.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. What is birefringence?</p> <p>12 A. Birefringence is the difference</p> <p>13 between the mineral's highest refractive</p> <p>14 indices and its lowest refractive indices.</p> <p>15 Q. Okay. What do you mean by -- what</p> <p>16 do you mean by highest refractive indices,</p> <p>17 first?</p> <p>18 A. The highest refractive index for the</p> <p>19 mineral.</p> <p>20 Q. And so if a mineral is displaying</p> <p>21 more than one color, how do you determine what</p> <p>22 the highest refractive index is?</p> <p>23 MR. LUDWIG: Objection to form.</p> <p>24 THE WITNESS: One would</p> <p>25 normally look for the wavelength that would be</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. But is it the difference between the</p> <p>2 highest and the lowest refractive indices? Is</p> <p>3 that what maximum difference means?</p> <p>4 A. Can you rephrase that just a little</p> <p>5 bit?</p> <p>6 Q. Sure. I mean, if you get -- if</p> <p>7 you're saying that alpha and gamma are defined</p> <p>8 by highest and lowest refractive indices, the</p> <p>9 maximum difference means the difference</p> <p>10 between that highest and that lowest</p> <p>11 refractive index, right?</p> <p>12 A. That would be the way I would see</p> <p>13 it, yes.</p> <p>14 Q. Okay. And do you know -- if we go</p> <p>15 back to that slide that was marked as</p> <p>16 exhibit 4.</p> <p>17 MR. DUBIN: It could also be</p> <p>18 slide 10. Whatever makes it easier for you,</p> <p>19 Jake, to call it up.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. Do you know what causes chrysotile</p> <p>22 to appear magenta in parallel?</p> <p>23 A. It's the angle of the fraction as</p> <p>24 the light passes up at the oil-particle</p> <p>25 interface.</p>
<p style="text-align: right;">Page 51</p> <p>1 the highest of the mineral in the gamma</p> <p>2 direction and --</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. And -- sorry. Go ahead.</p> <p>5 A. And then apply that to the charts.</p> <p>6 Q. Okay. How do you -- and then how do</p> <p>7 you determine what the lowest refractive index</p> <p>8 is if a mineral is displaying more than one</p> <p>9 color?</p> <p>10 A. You put it into the alpha direction.</p> <p>11 For chrysotile, that would be perpendicular.</p> <p>12 Q. Is it correct that the birefringence</p> <p>13 is the quantitative expression of the maximum</p> <p>14 difference in refractive index due to double</p> <p>15 refraction?</p> <p>16 MR. LUDWIG: Objection to form.</p> <p>17 THE WITNESS: That is my</p> <p>18 understanding.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. And what do you understand maximum</p> <p>21 difference in that context to mean?</p> <p>22 A. For any particular particle, it</p> <p>23 would be what my examination leads me to</p> <p>24 determine to be the refractive indices in most</p> <p>25 gamma and alpha direction.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. And what creates the color magenta?</p> <p>2 What creates -- what causes you to see the</p> <p>3 color magenta specifically?</p> <p>4 MS. O'DELL: I object to the</p> <p>5 question to the degree it calls for an expert</p> <p>6 opinion and it relates not to the testing</p> <p>7 analysis that Mr. Hess has done on a specific</p> <p>8 sample, which is the purpose of this</p> <p>9 deposition. Asking expert opinion is not the</p> <p>10 purpose of this deposition.</p> <p>11 MR. LUDWIG: The Court has</p> <p>12 already ordered on that. So this doesn't have</p> <p>13 anything to do with the specific exam or the</p> <p>14 scope on which the Court just advised the</p> <p>15 parties to stay within. I am objecting to the</p> <p>16 form of the question.</p> <p>17 MR. DUBIN: I will lay a</p> <p>18 further foundation for it.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. We are going to be talking about</p> <p>21 your work identifying chrysotile in Johnson &</p> <p>22 Johnson, but, typically, when MAS was</p> <p>23 identifying chrysotile in Johnson & Johnson,</p> <p>24 it was -- what was being called chrysotile was</p> <p>25 yellow in parallel, right?</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. LUDWIG: Same objection. 2 That is exactly what the Court 3 ruled upon. So objection. 4 MR. DUBIN: No. Those are the 5 reports at issue, which the Court said we 6 could ask about. 7 MS. O'DELL: And if you would 8 like to ask Mr. Hess about specific reports, 9 he is here and prepared to respond to your 10 questions, but asking for expert opinion is 11 beyond the scope of what Judge Schneider 12 established for this deposition and we'll 13 instruct the witness not to answer. 14 MR. LUDWIG: I instruct the 15 witness not to answer that question. 16 BY MR. DUBIN: 17 Q. In your reports identifying 18 chrysotile in Johnson & Johnson, what color 19 are the particles that you're calling 20 chrysotile typically in parallel? 21 MR. LUDWIG: Objection to form. 22 THE WITNESS: The colors that I 23 utilize to determine the wavelength are at the 24 edge of the particle and not in the center. 25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. DUBIN: All right. Let's 2 take this down. We'll come back to it when we 3 show your reports. 4 BY MR. DUBIN: 5 Q. What color -- what is the refractive 6 index of talc? 7 A. It has wide -- a large 8 birefringence, but normally it will be 9 somewhere in the range of around 1.540 to 10 1.605, based on the experience of what I have 11 seen. 12 Q. How about a talc plate, a flat talc 13 plate? What is -- what is the refractive 14 index of a talc plate? 15 MS. O'DELL: Object to the 16 form. 17 THE WITNESS: I don't believe 18 the talc plate has any birefringence, but the 19 edges that I have seen have been blue in 1.55, 20 and have been yellowish in 1.605. 21 BY MR. DUBIN: 22 Q. Did the CSDS colors associated with 23 talc itself in 1.550 oil include the color 24 red? 25 MS. O'DELL: Would you repeat</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. What color are the particles? 2 MS. O'DELL: Objection to the 3 form. 4 What particle? What -- 5 BY MR. DUBIN: 6 Q. The particle that you're calling 7 chrysotile in the reports that you're talking 8 about today? 9 MR. LUDWIG: Is there a 10 specific report you want to show him? This 11 right here, it looks like an exhibit created 12 by defense counsel. So that's not -- he is 13 not here to opine about this exhibit that 14 looks like a PowerPoint by someone else. 15 This is not a -- 16 MR. DUBIN: This is enough 17 speaking objections. You can make your 18 objections if you want to make your 19 objections. If you want to instruct your 20 witness not to answer the question, then you 21 can do that, but no more speaking objections. 22 It's gone way too far. 23 MR. LUDWIG: Based on the scope 24 that the Judge had lined out, I am instructing 25 him not to answer that question.</p>	<p style="text-align: right;">Page 57</p> <p>1 the question? I missed the first part. 2 BY MR. DUBIN: 3 Q. Do the central stop dispersion 4 staining colors of talc plates themselves in 5 1.550 oil include the color red? 6 MS. O'DELL: Object to the 7 form. 8 MR. LUDWIG: Same objection as 9 before. 10 I instruct you not to answer. 11 That's -- that calls for an 12 expert opinion. 13 MR. DUBIN: I am asking his 14 understanding and it relates to this work that 15 he is doing. 16 BY MR. DUBIN: 17 Q. Did it -- does it include red? 18 MS. O'DELL: If you have a 19 specific particle you would like to ask him 20 about, that's within the scope of the order, 21 but to ask it in isolation is beyond the scope 22 and seeks an expert opinion. 23 MR. DUBIN: Fine -- 24 MR. LUDWIG: Join. 25 MR. DUBIN: -- when you get to</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 the specific color, the specific reports. 2 BY MR. DUBIN: 3 Q. So let's look at one of your reports 4 just so we can understand, again, what color 5 talc should be. So we're now going to be 6 looking at an image from your -- from the 7 September 16, 2020 report on Chinese talc 8 research samples where you were the PLM 9 analyst. 10 MR. DUBIN: So can we make that 11 image exhibit 5. 12 (Exhibit 5 marked for 13 identification.) 14 MS. O'DELL: So, first, object 15 to a reference that those reports are his 16 report. Those reports are reports from 17 Dr. Longo, first. 18 Second, if you're going to ask 19 him a question about a report, it needs to be 20 put in the chat and the specific page that 21 you're referring to needs to be identified so 22 he can see it in context. 23 MR. DUBIN: And I am going to 24 identify the specific page that we're talking 25 about. So let's put it in chat and then we</p>	<p style="text-align: right;">Page 60</p> <p>1 don't know if it's his report or not. I trust 2 Ms. O'Dell. 3 So you're instructed not to 4 answer. 5 MR. DUBIN: Okay. We'll 6 double-check what you're -- the list that went 7 in, but I believe that the results in this are 8 included in the reports, but we'll -- I'll 9 hold off on this image until after a break so 10 that we don't have to spend time arguing it. 11 BY MR. DUBIN: 12 Q. Let's look at another image first, 13 but before I get to more images, I want to 14 stop and ask you a little bit about your 15 microscopes, okay, and what microscopes you 16 were using and how you set them up. 17 At some point initially were 18 you using an Olympus microscope for -- to look 19 at Johnson & Johnson for chrysotile? 20 A. Olympus BH2. 21 Q. And that -- so can you repeat the 22 model number for me? BX? 23 A. BH, bravo -- 24 Q. Okay. BH2. Okay. And those 25 microscopes had tungsten lightbulbs?</p>
<p style="text-align: right;">Page 59</p> <p>1 can call it up, okay, and then we're going to 2 go to page 3 of this. 3 MS. O'DELL: And if you would 4 identify -- please, just if you'll go back to 5 page 1. Because I am not seeing it in the 6 chat yet. 7 MR. LUDWIG: It's in the chat 8 here now. 9 MR. DUBIN: It is in the chat. 10 MS. O'DELL: Okay. 11 MR. DUBIN: 296, actually, is 12 the image and we can rotate that so we can see 13 it better. 14 MS. O'DELL: And what's -- I'm 15 sorry, Morty. I couldn't see it. I was too 16 slow trying to see. I see here. Just a 17 moment. Let me make sure that this is 18 actually a report at issue in the MDL. 19 This is not one of the reports 20 that's been disclosed in the MDL and so we 21 would object to questioning based on that. 22 MR. LUDWIG: If it's not a 23 report disclosed in the MDL and it's not 24 subject to the Judge's scope, then I am 25 instructing the witness not to answer. I</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Yes, sir. 2 Q. And then at some point you switched 3 over to Leica microscopes; is that right? 4 A. That is correct. 5 Q. And what was the Leica model number? 6 A. As I recall, it's the 2700P. 7 Q. Do you recall approximately when you 8 changed over microscopes? 9 A. It was during the early part of 10 2021, I believe. 11 Q. And just so we understand basically 12 how it operated, how was illumination 13 controlled on the Olympus PLM? 14 A. By individual controls on the side 15 and to bring up as much light as possible. 16 Q. Okay. So was it a dial? Was it a 17 switch? How did you adjust illumination? 18 A. On the lamp itself, there was a 19 little dial on the side. 20 Q. Okay. And what -- did MAS have any 21 protocols for how illumination should be set 22 on the Olympus microscope when doing the 23 analysis? 24 A. I would always set it myself to the 25 highest illumination.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Okay. As a PLM analyst, how do you 2 tell if an image is appropriately illuminated? 3 A. Well, if the scope had capability, 4 we use Kohler illumination, but the best way 5 to get the most illumination out of any type 6 of scope is to have all the different parts 7 align and centered. 8 Q. Okay. And is it important for a PLM 9 analyst to be able to see all the particles in 10 the field of view clearly? 11 A. Through the ocular, yes. 12 Q. When you were doing your analysis on 13 the Olympus microscope and you were looking 14 for the colors of the particle, were you 15 typically doing that by assessing it through 16 the eyepiece of the microscope or by looking 17 at the -- or looking at a screen? 18 A. Through the microscope. 19 Q. And did the -- what is white 20 balancing? 21 A. Basically, it takes the program that 22 you're using for the graphics and allows it to 23 adjust to the pure white light. 24 Q. And did the Olympus come with any 25 filters, like a daylight filter or blue</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. LUDWIG: Is there a 2 specific report you're asking about? 3 MR. DUBIN: There are a set of 4 reports that are done on an Olympus 5 microscope. There are then a set of reports 6 that are done on the Leica microscope. 7 I am asking about the ones he 8 did on Olympus. If we want -- if we need to 9 call up an example, I am happy to do that. So 10 we'll call up an example of that. 11 We can go to the Zimmerman 12 report and that will be exhibit 6 and so let's 13 make that exhibit 6. For internal reference 14 it's CX-6. It's -- this is an image from the 15 February 24, 2020 analysis of Johnson & 16 Johnson. We can put it in chat and call it 17 up. 18 (Exhibit 6 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. Okay. And I want to look at an 22 image there. We can go to, I guess, 39 of the 23 report. I am just going to -- okay. For 24 example, this was in 2020. 25 So this would be on the Olympus</p>
<p style="text-align: right;">Page 63</p> <p>1 filter, to perform white balancing with? 2 A. It had a -- we had a blue diffusion, 3 but there was nothing in -- to do white 4 balance, you have to have a white background. 5 Q. So it came with a blue light or 6 daylight filter? 7 A. I would just remove the diffuser. 8 Q. I am sorry. I don't understand. 9 Would -- did the microscope 10 come with or did you have a blue light or 11 daylight filter on the Olympus? 12 A. I don't recall. 13 Q. Do you know whether you used a blue 14 light or a daylight filter when performing 15 analysis for chrysotile in Johnson & Johnson 16 with the Olympus microscope? 17 MR. LUDWIG: Objection to form. 18 Is there are a specific test 19 you're asking about? It's my understanding 20 there was lots of tests. 21 So I am going to object to the 22 form. Same scope issue. 23 MR. DUBIN: It's the reports at 24 issue. I'm asking about his microscope setup 25 for the reports at issue.</p>	<p style="text-align: right;">Page 65</p> <p>1 microscope, correct? 2 A. That is correct. 3 Q. Okay. So now we have an image. 4 We're talking about a specific report. 5 When you were doing these 6 analyses for Johnson & Johnson, were you using 7 a blue light or daylight filter? 8 A. I don't recall if we ever had any 9 specific daylight or blue filters for the 10 Olympus. The only thing blue was the 11 diffuser. 12 MS. O'DELL: What is your other 13 report? 14 MR. DUBIN: So this is -- this 15 was page 36, I think. 16 BY MR. DUBIN: 17 Q. All right. We'll come back to that 18 in a bit. 19 Do you know what the purpose is 20 of a blue light or a daylight filter? 21 MS. O'DELL: Object to the 22 form. 23 MR. LUDWIG: Object to the 24 form, yeah. It calls for expert testimony. 25 I instruct you not to answer</p>

<p style="text-align: right;">Page 66</p> <p>1 that question.</p> <p>2 MR. DUBIN: You're instructing</p> <p>3 him not to answer? I am asking him about the</p> <p>4 work he did, how he set up his microscope, and</p> <p>5 what filters he was using and you're</p> <p>6 instructing him not to answer that?</p> <p>7 MS. O'DELL: That was not your</p> <p>8 question.</p> <p>9 MR. DUBIN: Well, I just asked</p> <p>10 him about whether it had a blue light filter</p> <p>11 and whether he was using it and I am asking</p> <p>12 him now what his understanding of the purpose</p> <p>13 of that type of filter is. Are you</p> <p>14 instructing him not to answer that question?</p> <p>15 MS. O'DELL: He is here to --</p> <p>16 he is here to testify to what he did, which</p> <p>17 he -- the equipment he used, which he has been</p> <p>18 responding to those questions.</p> <p>19 Understanding about certain</p> <p>20 methodologies, giving his opinion about</p> <p>21 certain methodologies is beyond the scope of</p> <p>22 what Judge Schneider has ordered.</p> <p>23 MR. DUBIN: Are you instructing</p> <p>24 him not to answer --</p> <p>25 MR. LUDWIG: The objection --</p>	<p style="text-align: right;">Page 68</p> <p>1 get there. Okay. Thank you.</p> <p>2 BY MR. DUBIN:</p> <p>3 Q. Do you know how looking at an image</p> <p>4 to tell whether a blue light filter or</p> <p>5 daylight filter is being used?</p> <p>6 A. I don't recall ever dealing with</p> <p>7 them.</p> <p>8 Q. Okay. How was focus adjusted on the</p> <p>9 Olympus microscope?</p> <p>10 A. Focus would be adjusted using the</p> <p>11 fine focus knob.</p> <p>12 Q. Okay. I want to show you another</p> <p>13 image and ask you if you can tell me whether a</p> <p>14 blue light filter is being used or not.</p> <p>15 MR. DUBIN: It will be</p> <p>16 exhibit -- what number are we on? We are now</p> <p>17 on six?</p> <p>18 THE COURT REPORTER: Seven.</p> <p>19 MR. DUBIN: And that is --</p> <p>20 THE COURT REPORTER: You're on</p> <p>21 exhibit 7, I believe.</p> <p>22 MR. DUBIN: Exhibit 7. Okay.</p> <p>23 That is CX-11A to call it up and if you could</p> <p>24 just go to page 22 of it and put it in chat.</p> <p>25 MS. O'DELL: Mr. Hess, just</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. DUBIN: -- a simple</p> <p>2 question about the purpose of a blue light</p> <p>3 filter? Are you instructing him not to</p> <p>4 answer?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 MR. LUDWIG: I believe that is</p> <p>8 outside the scope of what the Judge just</p> <p>9 said --</p> <p>10 MR. DUBIN: I really don't --</p> <p>11 if you instruct him not to answer, I don't</p> <p>12 need to hear a long speaking objection in</p> <p>13 addition.</p> <p>14 MR. LUDWIG: Sure. Fair</p> <p>15 enough.</p> <p>16 MS. O'DELL: And just for the</p> <p>17 record, Morty -- and I think it's just a page</p> <p>18 number issue -- you identified what's on the</p> <p>19 screen as page 36 of the report. I am</p> <p>20 assuming you mean 36 -- page 36 in the PDF?</p> <p>21 MR. KEESTER: It's 39 in the</p> <p>22 PDF.</p> <p>23 MR. DUBIN: Thirty-nine.</p> <p>24 Sorry.</p> <p>25 MS. O'DELL: Okay. Let me just</p>	<p style="text-align: right;">Page 69</p> <p>1 give us a moment to see what's going to be put</p> <p>2 on the screen and what the report is.</p> <p>3 (Exhibit 7 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Page 22, can you tell me if a blue</p> <p>7 light or daylight filter is being used on this</p> <p>8 image?</p> <p>9 MR. LUDWIG: Objection --</p> <p>10 objection. This, once again, calls for expert</p> <p>11 opinion, which is outside the scope of the</p> <p>12 purpose of this deposition as instructed by</p> <p>13 the Judge.</p> <p>14 MR. DUBIN: Are you instructing</p> <p>15 him not to answer the question?</p> <p>16 MR. LUDWIG: I am instructing</p> <p>17 him not to answer the question.</p> <p>18 MS. O'DELL: Yes. This is not</p> <p>19 a document that's been disclosed in the MDL.</p> <p>20 It's a report for Dr. Longo. It's analysis of</p> <p>21 ceramic slip clay for something else that's</p> <p>22 not related and we object to the use of this</p> <p>23 exhibit.</p> <p>24 MR. DUBIN: Okay. Can we call</p> <p>25 up -- we'll make the next exhibit in order</p>

<p style="text-align: right;">Page 70</p> <p>1 Hess slide 20.</p> <p>2 THE COURT REPORTER: This is</p> <p>3 exhibit 8.</p> <p>4 MR. DUBIN: That's exhibit 8.</p> <p>5 Can we call that up, Jake?</p> <p>6 (Exhibit 8 marked for</p> <p>7 identification.)</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. I am putting up the image that I</p> <p>10 showed you before, as well as the image from</p> <p>11 Zimmerman that I showed you before. These are</p> <p>12 both analyses that you performed.</p> <p>13 Can you tell me why the color</p> <p>14 of the talc is different in the two images?</p> <p>15 MS. O'DELL: We object to the</p> <p>16 use of this document. First, Vanderbilt is</p> <p>17 not at issue in this case, it's not a report</p> <p>18 that's at issue in this case. We object to</p> <p>19 the use of that image.</p> <p>20 To the degree you want to have</p> <p>21 him -- ask him about the Zimmerman report.</p> <p>22 You had it up. He is welcome to answer</p> <p>23 questions, but we object to the use of this</p> <p>24 defense created exhibit.</p> <p>25 MR. LUDWIG: And I am going to</p>	<p style="text-align: right;">Page 72</p> <p>1 And if I asked you about the</p> <p>2 differences in illumination in these two</p> <p>3 images, are you going to instruct your witness</p> <p>4 not to answer that also?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MS. O'DELL: And, again -- and,</p> <p>7 Jake, I know you have a lot going on, but if</p> <p>8 you would put that in the chat, please.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. How are your images being taken on</p> <p>11 the Olympus? How are the images being taken?</p> <p>12 A. It was done using an AmScope camera</p> <p>13 and an AmScope program.</p> <p>14 Q. Okay. Were there any specific</p> <p>15 settings that you had on the camera for</p> <p>16 purposes of taking the images?</p> <p>17 A. I don't recall everything.</p> <p>18 Q. Are you familiar -- you're familiar</p> <p>19 with ISO 22262-1?</p> <p>20 A. Familiar.</p> <p>21 Q. Do you know whether it says anything</p> <p>22 about using blue or daylight filters?</p> <p>23 MS. O'DELL: Object to the</p> <p>24 form; calls for expert opinion; beyond the</p> <p>25 scope of the work that Mr. Hess did in the</p>
<p style="text-align: right;">Page 71</p> <p>1 join and I am going to instruct him not to</p> <p>2 answer.</p> <p>3 Once again, you're getting into</p> <p>4 expert opinion, which is outside the scope of</p> <p>5 what the Judge instructed this witness.</p> <p>6 MR. DUBIN: Was your -- okay.</p> <p>7 So you're instructing him not to answer. I am</p> <p>8 going to ask another question. If you</p> <p>9 instruct him not to answer, then so be it.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. But was the microscope set up</p> <p>12 differently in these two analyses? Can you</p> <p>13 tell by looking at the images whether the</p> <p>14 microscope was set up differently in the two</p> <p>15 analyses?</p> <p>16 MR. LUDWIG: Same objection.</p> <p>17 MS. O'DELL: Please put the</p> <p>18 exhibit in the chat.</p> <p>19 MR. DUBIN: Are you instructing</p> <p>20 him not to answer?</p> <p>21 MR. LUDWIG: Yes.</p> <p>22 MR. DUBIN: And if -- can you</p> <p>23 leave it back up, Jake? What's going on? I</p> <p>24 am not done yet. Can you put that back up,</p> <p>25 Jake? Thank you.</p>	<p style="text-align: right;">Page 73</p> <p>1 MDL; and that's my objection.</p> <p>2 Counsel can decide whether to</p> <p>3 instruct him not to answer.</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 you not to answer that.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. Okay. Let's talk about your Leica</p> <p>8 microscope setup.</p> <p>9 First, how was illumination</p> <p>10 adjusted on the Leica microscope?</p> <p>11 A. It had a lamp knob on the side,</p> <p>12 which we could bring up full illumination.</p> <p>13 Q. Was it a dial or was it -- was it a</p> <p>14 switch? How did the illumination work?</p> <p>15 A. It was a dial.</p> <p>16 Q. And what -- if you turn that dial,</p> <p>17 if you kept turning it, would it stop at some</p> <p>18 point or could you continue to turn it and</p> <p>19 turn it?</p> <p>20 A. I could continue to turn it.</p> <p>21 Q. Okay. So how did you set the</p> <p>22 brightness on the Leica?</p> <p>23 A. By observation through the</p> <p>24 microscope itself to the brightest point</p> <p>25 available.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. So you -- did you always keep it at 2 the brightest point available? 3 A. Yes, sir. 4 Q. Okay. And did the Leica microscope 5 come with any filters? 6 A. The only filter I'm aware of is the 7 530 nanometer plate. 8 Q. Did it have a daylight filter 9 switch? 10 A. Not that I am aware of. 11 MR. DUBIN: Let's make exhibit 12 9 Hess slide 22 and we can call that up. 13 (Exhibit 9 marked for 14 identification.) 15 BY MR. DUBIN: 16 Q. Is this -- does this look familiar 17 to you as the Leica microscope that you were 18 using? 19 A. It looks familiar. 20 Q. Do you recall the switches that we 21 see here: Daylight filter switch, neutral 22 density filter switch? 23 A. Yes. 24 Q. Okay. Do you know whether your -- 25 when you started using the Leica microscope,</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. DUBIN: Exhibit 10. 2 (Exhibit 10 marked for 3 identification.) 4 BY MR. DUBIN: 5 Q. Do you know why your images taken on 6 the Olympus microscope of talc are more orange 7 than reference talc images? 8 MS. O'DELL: I object to the 9 use of this exhibit. It's unclear if it came 10 from a report that's at issue in this 11 deposition, it's unclear if it's -- if it's 12 Mr. Hess' work, and we object to its use. 13 MR. LUDWIG: And I will join. 14 It outside the scope of the parameter of the 15 deposition. I am instructing Mr. Hess not to 16 answer that question. 17 MR. DUBIN: Okay. 18 BY MR. DUBIN: 19 Q. Let's, again, go to your Zimmerman 20 report. We have already marked that as an 21 exhibit. We can call it back up, CX-6. So we 22 have looked at this already. Let's go back to 23 that image, starting at page 39. 24 So this is something that 25 you're calling chrysotile in parallel in</p>
<p style="text-align: right;">Page 75</p> <p>1 whether your daylight filter switch was in an 2 "on" or "off" position? 3 A. I don't recall today. 4 Q. All right. Are you familiar with 5 what reference talc looks like from the USP 6 documents? 7 MR. LUDWIG: Objection; calls 8 for expert opinion. I am instructing him not 9 to answer. 10 MS. O'DELL: Join. 11 MR. DUBIN: Okay. Well, 12 just -- we'll see. You may instruct him not 13 to answer again, but I am going to ask it. 14 If we can put Hess slide 24 as 15 the next exhibit. 16 MS. O'DELL: We have not gotten 17 the last exhibit in the chat yet. So, please, 18 if we can just pause and take the time and put 19 that in the chat? Thank you. 20 MR. KEESTER: I'm sorry, Morty. 21 What slide are we doing? 22 MR. DUBIN: Twenty-four. 23 MR. LUDWIG: Is slide 24 24 exhibit 9 or is slide 24 exhibit 10? I'm 25 sorry.</p>	<p style="text-align: right;">Page 77</p> <p>1 1.550. 2 What color is that? 3 MS. O'DELL: If you need to see 4 it and see it more closely, Mr. Hess, please 5 let us know that. 6 And if there is -- if there is 7 a specific structure you're referring to that 8 you can direct Mr. Hess? 9 MR. DUBIN: Right. 10 BY MR. DUBIN: 11 Q. The one with the micron bar under it 12 is the one that they are calling chrysotile. 13 What color is it? 14 MR. LUDWIG: Can I have that 15 question reread, please? 16 THE COURT REPORTER: One 17 moment. 18 "QUESTION: So this is 19 something that you're calling chrysotile 20 in parallel in 1.550. 21 "What color is that?" 22 MR. LUDWIG: I am going to 23 object once again. It's calling for an expert 24 opinion. 25 MR. DUBIN: This is -- I am</p>

<p style="text-align: right;">Page 78</p> <p>1 asking him about his reports that are at issue 2 in this case and asking him what color that he 3 is calling particles and that is exactly in 4 the scope of the deposition. 5 So unless you're instructing 6 him not to answer that as well, my question 7 stands. 8 MR. LUDWIG: I instruct him not 9 to answer that question. 10 MR. DUBIN: Okay. So now 11 you're instructing the witness not to answer 12 questions even about the specific reports that 13 he was -- that we were permitted to depose him 14 on. 15 Is that my understanding? 16 MS. O'DELL: So would you 17 repeat your question, please? 18 MR. DUBIN: Oh, my goodness. 19 What color is the particle that you're calling 20 chrysotile here? 21 MR. LUDWIG: I am standing by 22 my objection. I am instructing him not to 23 answer. 24 It goes to -- you're asking him 25 to opine as to the color. The color is on the</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. We can zoom more in. 2 A. The center part of it is a golden 3 yellow, but I cannot determine the edges, 4 which is where I need to look. 5 Q. Okay. Well, we'll go over this edge 6 effect, but you can agree that this is not -- 7 this does not look like reference chrysotile, 8 correct? 9 MS. O'DELL: Object to the 10 form. 11 MR. LUDWIG: Same objection. 12 THE WITNESS: The center of the 13 particle is not what you would usually call. 14 BY MR. DUBIN: 15 Q. And -- sorry. And you see that 16 there are rounded structures in this image, 17 right? 18 A. There are. 19 Q. Those are talc? 20 A. Some may be. 21 Q. Are they the same color as the 22 particle that you're calling chrysotile? 23 MS. O'DELL: Object to the 24 form. 25 THE WITNESS: It is, but I --</p>
<p style="text-align: right;">Page 79</p> <p>1 screen and it is part of an expert report 2 prepared by MAS and you're taking it out of 3 context. 4 So I am going to instruct you 5 not to answer. 6 If you want to ask him how he 7 developed the color, that's what the Judge 8 said, but -- 9 MR. DUBIN: (Inaudible.) 10 MR. LUDWIG: -- his personal 11 involvement. 12 BY MR. DUBIN: 13 Q. You are the analyst who did this 14 work for the Zimmerman report and we can go 15 through your PLM -- the PLM sheets. 16 You did this analysis, right? 17 MR. LUDWIG: Okay. That's 18 fine. Let's do that. 19 BY MR. DUBIN: 20 Q. You did this analysis? These are 21 your PLM images, correct, Mr. Hess? 22 A. It is. 23 Q. So I'm asking you what color did you 24 assess this particle as? 25 A. Could you zoom in on the particle?</p>	<p style="text-align: right;">Page 81</p> <p>1 the other particle colors, without being able 2 to see the true edges of the particle in 3 question -- 4 BY MR. DUBIN: 5 Q. Okay. We'll talk about edges -- 6 MS. O'DELL: Excuse me, Morty. 7 I don't believe you could hear. He is not 8 finished with his answer. 9 BY MR. DUBIN: 10 Q. Go ahead. 11 A. -- I cannot comment. 12 Q. We'll talk about edges later. 13 Have you seen any PLM work of 14 Johnson & Johnson done by any other experts? 15 A. I don't recall. 16 MR. DUBIN: Okay. Let's put up 17 Hess slide 25 as exhibit 11. 18 (Exhibit 11 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. We're looking at images of PLM -- 22 and I will mark the entire report also from 23 Mr. Poye and from you -- both from on talcs. 24 Do you have any understanding 25 why the images look so different?</p>

<p style="text-align: right;">Page 82</p> <p>1 MR. LUDWIG: Objection to form; 2 that goes into expert testimony and you made 3 your question -- this appears to be a defense 4 exhibit, I guess, comparing two different 5 samples. It is not a specific report from 6 MAS. 7 So I am instructing the witness 8 not to answer. This calls for expert opinion, 9 outside the scope of his testimony. 10 MS. O'DELL: Join. 11 MR. DUBIN: So the whole -- so 12 that we have the whole report in the record, 13 let's mark CX-53 as exhibit 11. 14 MS. O'DELL: Please put the 15 slide in the chat screen, Jake. Thank you. 16 THE COURT REPORTER: I just 17 want to confirm. Exhibit 11 was slide 25. 18 Are we now marking the whole report? 19 MR. DUBIN: Yeah, we're going 20 to now mark the whole report as exhibit 11. 21 MS. O'DELL: And we have -- 22 since the -- 23 MR. DUBIN: I am just marking 24 it for the record. I understand you have 25 objected to my asking him about it.</p>	<p style="text-align: right;">Page 84</p> <p>1 for your deposition today was some material 2 from Dr. Su. 3 What did you review? 4 A. I reviewed primarily the -- all the 5 images that he had put in the comments. For 6 lack of a better way to put it, the slide 7 show. 8 Q. Okay. Have you reviewed his 9 affidavit entitled: Review of Dr. Longo's PLM 10 Methods for the Identification of Chrysotile? 11 A. I don't recall that one. 12 Q. Okay. What, if any, comments do you 13 have on the slides that you reviewed from 14 Dr. Su? 15 A. Well -- 16 MS. O'DELL: Object to form. 17 MR. LUDWIG: Object to the 18 form. 19 MS. O'DELL: Calls for expert 20 opinion. It's beyond the scope of this 21 deposition. 22 MR. DUBIN: Are you instructing 23 him not to answer? 24 MR. LUDWIG: I am instructing 25 him not to answer.</p>
<p style="text-align: right;">Page 83</p> <p>1 MS. O'DELL: Understood, but is 2 the report going to be exhibit 12 and the 3 slide is going to be exhibit 11? 4 MR. DUBIN: I thought the 5 report was 11, but maybe I miscounted. 6 MR. LUDWIG: Exhibit 11 was the 7 slide and then exhibit 12 was going to be the 8 full report, if that's what you want to do. 9 I'm sorry. I am not trying to 10 step on your toes. I am trying to be helpful 11 in this. 12 MR. DUBIN: If the slide was 13 not marked -- I thought that was exhibit 10, 14 but if it's not marked, that's fine. I can 15 make it exhibit 12. 16 THE COURT REPORTER: This is 17 the court reporter. We have slide 25 as 18 exhibit 11. We have the report as exhibit 12. 19 MR. DUBIN: Okay. 20 MS. O'DELL: Thank you. 21 (Exhibit 12 marked for 22 identification.) 23 BY MR. DUBIN: 24 Q. All right. You indicated that one 25 of the things that you reviewed in preparation</p>	<p style="text-align: right;">Page 85</p> <p>1 BY MR. DUBIN: 2 Q. You also indicated you reviewed some 3 materials from Dr. Wylie? 4 MS. O'DELL: Same. 5 BY MR. DUBIN: 6 Q. What did you review? 7 A. The report that -- I don't recall 8 the name of the report, but I believe it was 9 her most recent report. 10 Q. Okay. Do you have any comments on 11 the -- on her review of your work? 12 MR. LUDWIG: Same objection. 13 I instruct him not to answer. 14 He is not here to provide criticisms of 15 Dr. Wylie. The Court made it very clear, the 16 scope of the testimony. 17 MS. O'DELL: Join. 18 MR. DUBIN: These are all 19 related to his work that is the subject of 20 this deposition, but if you're instructing him 21 not to answer, then that will be an 22 instruction. We'll take it up at some point. 23 Because we're clearly going to 24 have to go back to the drawing board about the 25 way that these objections are being made, but</p>

<p style="text-align: right;">Page 86</p> <p>1 if you're instructing him not to answer, but 2 my proffer is that they are all about the 3 reports at issue in this case. 4 MS. O'DELL: Mr. Hess is here 5 today to answer questions regarding his 6 reports and he has answered your questions 7 about those. He is not here to offer expert 8 opinion, criticism, thoughts, et cetera, about 9 defense or expert witnesses. 10 MR. DUBIN: Okay. 11 BY MR. DUBIN: 12 Q. In terms of illumination, I want to 13 look at another report just quickly, your 14 report and your analysis. It will be exhibit 15 13. It's CX-28 is the internal reference and 16 it's dated 4/13/2021. 17 MR. DUBIN: If we could put it 18 in chat and then call it up. 19 MS. O'DELL: Chris, you put a 20 comment in chat. Did you have an objection? 21 We're not hearing you if you're making an 22 objection. 23 MR. PLACITELLA: Well, my 24 objection is that it seems like it's 25 repeatedly -- documents are repeatedly being</p>	<p style="text-align: right;">Page 88</p> <p>1 Is it your testimony that this 2 image was taken at maximum illumination? 3 A. Yes, sir. 4 Q. So the brightness level on the 5 Olympus does not go any higher than this? 6 MR. LUDWIG: Objection; asked 7 and answered. 8 THE WITNESS: Pardon? 9 MR. LUDWIG: I said, objection; 10 asked and answered. 11 BY MR. DUBIN: 12 Q. Is that correct? Your testimony is 13 that the Olympus microscope you were using at 14 this time, it cannot take any brighter images 15 than this. 16 Is that your testimony? 17 MS. O'DELL: Object to the 18 form. 19 THE WITNESS: May I see the 20 lower part of the image? 21 BY MR. DUBIN: 22 Q. I'm sorry? You want to see the 23 lower part of the image? Sure. 24 A. Thank you. 25 That was not taken on the</p>
<p style="text-align: right;">Page 87</p> <p>1 put up in contravention of the Court's Order 2 and we're here to try to get through this 3 deposition and the purposes of trying to make 4 a record. 5 I mean, this is exactly what 6 the Judge said not to do -- 7 MR. DUBIN: Okay. 8 MR. PLACITELLA: -- and you 9 keep doing it. 10 MR. DUBIN: I completely 11 disagree with you and I am making my record. 12 He is being instructed not to answer, I need a 13 record of that, and thank you for your 14 comments, but we're moving on. 15 MR. PLACITELLA: Okay. No 16 problem. 17 MR. DUBIN: Thanks. 18 (Exhibit 13 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. So I just want to understand your 22 testimony. If we go to PDF 2 here, this is 23 one of your -- sorry. It will be the image. 24 So it's at 84. And, again, I want to talk to 25 you a little bit about illumination.</p>	<p style="text-align: right;">Page 89</p> <p>1 Olympus. 2 Q. Okay. So this is Leica? 3 A. This is a Leica. 4 Q. Okay. So is it your testimony that 5 the Leica microscope cannot take any brighter 6 images than this? 7 MS. O'DELL: Object to the 8 form. 9 MR. LUDWIG: Object to the 10 form. 11 THE WITNESS: That is the 12 brightest I could get for that particular 13 mount. 14 BY MR. DUBIN: 15 Q. Okay. And, for example, if we just 16 look at page 85 of this, we can see the 17 perpendicular. 18 Is it your testimony that this 19 type of image is taken at maximum brightness 20 on the Leica? 21 MS. O'DELL: Object to the 22 form. 23 THE WITNESS: It is. 24 BY MR. DUBIN: 25 Q. Okay. We'll come back to</p>

<p style="text-align: right;">Page 90</p> <p>1 illumination in a bit, but let's first just 2 talk a little bit about the switch that was 3 made at some point to 1.560 oil. 4 Do you know why that switch was 5 made in your analysis? 6 MR. DUBIN: You can take this 7 down, Jake. 8 THE WITNESS: The switch was 9 made at the suggestion -- I don't recall his 10 name, but he was in, talking with Dr. Longo; 11 and he was back, watching me do some work; and 12 he made the suggestion because of the intense 13 stretch of yellow on the color chart for 1.55, 14 that we do it with 1.560 to better define the 15 upper level of what we were finding in the 16 chrysotile. 17 MR. LUDWIG: I think the 18 question went to switching microscopes. 19 MR. DUBIN: No. He understood 20 the question. It was why the oil was 21 switched. 22 MR. LUDWIG: I'm sorry. 23 BY MR. DUBIN: 24 Q. Okay. And what is the expected 25 effect if you are switching from 1.550 to 1.60</p>	<p style="text-align: right;">Page 92</p> <p>1 bit. Let's put that in chat and we can go to 2 page 32 of it. Sorry. Is it page 32? It 3 should be the image. Okay. 4 Well, let's -- I will -- we can 5 just take the break now. I will leave that in 6 chat so that if anybody needs it over the 7 break. 8 What are we going to take? Ten 9 minutes? 10 MR. LUDWIG: Ten minutes is 11 great. 12 MR. DUBIN: All right. We can 13 do ten minutes. 14 VIDEOGRAPHER: The time is 15 11:19 a.m. We are off the record. 16 (Break held off the record.) 17 VIDEOGRAPHER: The time is 18 11:37 a.m. We are back on the record. 19 MR. DUBIN: We are going to 20 start talking about the Valadez report and the 21 Valadez report -- if we can put it back up? 22 We can just go to the front cover first and 23 then we'll come back here to the image. Okay. 24 BY MR. DUBIN: 25 Q. So the -- this is what we referred</p>
<p style="text-align: right;">Page 91</p> <p>1 oil? 2 A. We didn't switch to 1.60. 3 Q. Sorry. What did you say? 4 A. That we didn't switch to 1.60. 5 Q. You didn't switch to 1.560? Maybe I 6 misspoke. 7 What is the expected effect of 8 switching to one, five -- 1.560 oil? 9 MR. LUDWIG: I'm going to 10 object; that calls for an expert opinion. I 11 am instructing the witness not to answer that 12 question. 13 MR. DUBIN: Okay. Well, I want 14 to call up -- let's just mark the Valadez 15 report as the next exhibit in order. I guess 16 that's 14. 17 (Exhibit 14 marked for 18 identification.) 19 MR. LUDWIG: Mr. Dubin, we have 20 been going for close to an hour and fifteen. 21 Do you want to just do this last one and then 22 take a break? 23 MR. DUBIN: I'll call up -- 24 I'll put up the report and I'll put it in chat 25 because we're going to talk about it for a</p>	<p style="text-align: right;">Page 93</p> <p>1 to as the Valadez report from 2023. 2 So we would be taking about a 3 Leica microscope, correct? 4 A. That is correct. 5 Q. And we're talking now about using 6 1.560 oil, right? 7 A. Yes, sir. 8 Q. Okay. And so let's go to that image 9 first. 10 MS. O'DELL: For the record, 11 what page in the PDF? 12 MR. DUBIN: What page is that, 13 Jake? 14 MR. KEESTER: This is PDF page 15 33. 16 MR. DUBIN: It's particle CSM 17 001. 18 BY MR. DUBIN: 19 Q. Now, I want to just quickly flip 20 back to the Zimmerman report we have already 21 looked at, the image, and if we can just look 22 at the image we had up before. 23 Can you see that the image in 24 the Zimmerman report is more golden or orange 25 than the image in the Valadez report? We can</p>

<p style="text-align: right;">Page 94</p> <p>1 go back and forth between them if you need to.</p> <p>2 MR. DUBIN: Can we flip back to</p> <p>3 Valadez?</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. Do you see that the Zimmerman report</p> <p>6 image is more golden or orange?</p> <p>7 A. I do.</p> <p>8 Q. Do you know why that is?</p> <p>9 A. From the BH2, which is the Zimmerman</p> <p>10 report, we were on a tungsten lamp, and it was</p> <p>11 to the respect that we were dealing with extra</p> <p>12 yellows from the tungsten lamp.</p> <p>13 Q. So the tungsten lamp was changing</p> <p>14 the color of the particle then?</p> <p>15 MS. O'DELL: Object to the</p> <p>16 form.</p> <p>17 MR. LUDWIG: Object to form.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. Is that correct?</p> <p>20 MS. O'DELL: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: We felt it was</p> <p>23 adding more yellow to the image of what we</p> <p>24 were seeing and what we were documenting.</p> <p>25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 96</p> <p>1 your question was.</p> <p>2 MR. DUBIN: We can read the</p> <p>3 question back.</p> <p>4 THE COURT REPORTER: One</p> <p>5 moment.</p> <p>6 "QUESTION: And it wasn't just</p> <p>7 adding yellow. If we go back to the</p> <p>8 Zimmerman image, it was adding sort of</p> <p>9 darker golden colors or orange colors to</p> <p>10 the image, right?"</p> <p>11 MS. O'DELL: Object to the</p> <p>12 form.</p> <p>13 MR. LUDWIG: I am going to</p> <p>14 stand by my objection.</p> <p>15 MR. DUBIN: So you're not just</p> <p>16 objecting. You're instructing him not to</p> <p>17 answer that question. I need to understand</p> <p>18 that.</p> <p>19 MR. LUDWIG: Correct.</p> <p>20 MR. DUBIN: So if I ask him any</p> <p>21 questions trying to compare various images in</p> <p>22 his reports, are you going to instruct him not</p> <p>23 to answer that?</p> <p>24 MS. O'DELL: You can proceed</p> <p>25 with your deposition, Morty. It's no way</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Okay. And it wasn't just adding</p> <p>2 yellow. If we go back to the Zimmerman report</p> <p>3 image, it was adding sort of darker golden</p> <p>4 colors or orange colors to the image, right?</p> <p>5 MS. O'DELL: Object to form.</p> <p>6 MR. LUDWIG: Objection. This</p> <p>7 calls for an expert opinion.</p> <p>8 I will instruct you not to</p> <p>9 answer that one.</p> <p>10 MR. DUBIN: You're instructing</p> <p>11 him not to answer that question about the</p> <p>12 comparison between these two images?</p> <p>13 MR. LUDWIG: Correct. You're</p> <p>14 testifying and I am going to object to that</p> <p>15 one.</p> <p>16 MR. DUBIN: You're objecting</p> <p>17 and you're instructing your witness not to</p> <p>18 answer a question about the impact of lighting</p> <p>19 on his images in the reports at issue in this</p> <p>20 deposition and you're instructing him not to</p> <p>21 answer.</p> <p>22 Is that my understanding?</p> <p>23 MR. LUDWIG: Could you -- let</p> <p>24 me hear the question again because I think</p> <p>25 you -- what you said was different than what</p>	<p style="text-align: right;">Page 97</p> <p>1 to -- to respond to that. I mean --</p> <p>2 MR. DUBIN: Okay. I just --</p> <p>3 we're obviously going to have to deal with</p> <p>4 this after the end of the questioning today,</p> <p>5 but we'll proceed.</p> <p>6 MS. O'DELL: I am not finished.</p> <p>7 MR. DUBIN: Okay.</p> <p>8 MS. O'DELL: Stop interrupting,</p> <p>9 please. If you ask him questions about the</p> <p>10 image and the work that he did, he is</p> <p>11 available to answer your question. He is not</p> <p>12 here to offer expert opinion. It has been</p> <p>13 stated numerous times.</p> <p>14 MR. DUBIN: I am asking him</p> <p>15 directly about his images right now. So --</p> <p>16 and he is still being instructed not to</p> <p>17 answer.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. So, again, I am asking you a</p> <p>20 question about this image.</p> <p>21 The tungsten lighting is not</p> <p>22 just adding more yellow; it's adding golden</p> <p>23 colors and more orange color to the images,</p> <p>24 right? Is that correct?</p> <p>25 MR. LUDWIG: Object.</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 I instruct you not to answer. 2 MR. DUBIN: You're instructing 3 him not to answer that question. Okay. 4 BY MR. DUBIN: 5 Q. And if we -- if we look at the 6 Valadez image, the effect of changing the 7 refractive index oil should have been to make 8 the particles less yellow, right? To move the 9 yellows towards the range of magenta, correct? 10 A. It was done to make it easier to 11 determine the upper refractive indices. 12 Q. But by -- if I have a particle that 13 is orange in parallel in 1.550 and I change my 14 oil to 1.560, it should appear more magenta, 15 right -- 16 MS. O'DELL: Objection. 17 BY MR. DUBIN: 18 Q. -- in the magenta range? 19 MS. O'DELL: Excuse me. 20 Objection. Seeks expert opinion. 21 MR. LUDWIG: Join. 22 I instruct the witness not to 23 answer. 24 BY MR. DUBIN: 25 Q. What color is this particle that you</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. DUBIN: Right. And so it's 2 also clear, it's CSM 001. 3 BY MR. DUBIN: 4 Q. Do you see rounded structures here 5 that you believe to be talc plates? 6 A. There are. 7 Q. And do you see that some of those 8 rounded structures have some red coloration 9 around the edges? 10 Do you see that? 11 A. I cannot -- 12 Q. (Inaudible.) 13 A. -- the edge color -- 14 MS. O'DELL: He was not 15 finished; so. 16 BY MR. DUBIN: 17 Q. What was the answer? 18 A. I cannot determine the edge colors 19 from the photograph as presented. 20 Q. You don't see red edges on the talc 21 plates? 22 MR. LUDWIG: Asked and 23 answered. 24 THE WITNESS: I don't on the 25 photograph as presented.</p>
<p style="text-align: right;">Page 99</p> <p>1 identified as chrysotile? What color is it? 2 A. Please, focus in. 3 Q. (Counsel complies.) 4 MS. O'DELL: Again, this is 5 page 33 of the Valadez report and that's being 6 shown on the screen? 7 MR. DUBIN: It may be page 32, 8 I think, but I don't know. Is it 33 or 32, 9 Jake? 10 MR. KEESTER: I have it as PDF 11 33. 12 MR. DUBIN: Okay. PDF 33. 13 THE WITNESS: It has a mottled 14 appearance, some yellow, but I cannot 15 ascertain the edge off of the photograph. 16 MR. DUBIN: Okay. 17 MS. O'DELL: And, Morty, just 18 to correct the record, I believe that this is 19 page 32 of the Valadez -- 20 MR. DUBIN: I said 32. It may 21 just be PDF 33. 22 MS. O'DELL: I am looking at 23 the actual report. The PDF report is 32 just 24 so it's clear when we go back what we're 25 looking at.</p>	<p style="text-align: right;">Page 101</p> <p>1 BY MR. DUBIN: 2 Q. Is red a central stop dispersion 3 color that is associated with talc itself in 4 1.550 or 1.560? 5 A. I am not aware that it is. 6 Q. Do you ever go through any process 7 to calibrate your dispersion staining colors? 8 A. We do that. 9 Q. And how do you do that? How did you 10 do that? 11 A. I didn't do them. There was 12 somebody else in the lab that did them. 13 Q. Do you know what the process was? 14 A. Initially, it was through the 15 Cargille glass solids. 16 Q. Cargille glass? 17 A. Yes, and -- 18 Q. And -- 19 MS. O'DELL: Sorry. He is not 20 finished. 21 BY MR. DUBIN: 22 Q. Go ahead. 23 A. And then recently was acquired a 24 refractive scope where you can check your 25 index difference.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. And Cargille -- those Cargille glass 2 standards have a single refractive index; is 3 that right? 4 A. That is correct. 5 Q. Meaning that they only have one true 6 central stop dispersion staining color; is 7 that correct? 8 A. That is correct. 9 Q. Okay. Can you still see sometimes 10 edges on the Cargille glass that show a 11 different color, not their true central stop 12 dispersion staining color? Can you sometimes 13 see edges on them of different colors? 14 MS. O'DELL: Objection to the 15 form to the degree it's talking about a 16 process that he did not do himself. 17 BY MR. DUBIN: 18 Q. Just only if you know personally? 19 MS. O'DELL: And do not 20 speculate, please, Mr. Hess. If you -- if 21 that's a process you were involved in for 22 purposes of your work in this case, you can 23 respond, but if it was not, well, that's 24 beyond the scope, and that's expert opinion. 25 THE WITNESS: I did not do the</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I am unfamiliar with the term. 2 Q. If we scroll down so we can see the 3 bottom of this, you see that there is a 4 refractive index number, 1.564; that is the 5 refractive index number that you assigned to 6 this particle; is that correct? 7 A. That is correct. 8 Q. Do you know what color that 9 refractive index number corresponds to in 10 1.560 oil? 11 A. Without the temperature information 12 handy and without the actual charts utilized, 13 it was more of a. 14 Q. So are you done with your answer? 15 A. I don't recall exactly off the top 16 of my head. 17 Q. Well, let's go through the process 18 so we understand how you can take that 19 refractive index number and determine what 20 color you were calling this particle. 21 And so I am going to show you a 22 couple different slides. We can just mark 23 them as separate exhibits. We can just start 24 with slide 34. 25 THE COURT REPORTER: For the</p>
<p style="text-align: right;">Page 103</p> <p>1 calibrations -- 2 BY MR. DUBIN: 3 Q. Are you -- 4 A. -- just said. 5 Q. Are you familiar with the fact that 6 you can -- that even with Cargille glass that 7 has a single refractive index, you can 8 sometimes see edge colors that don't 9 correspond to that refractive index? 10 MS. O'DELL: Objection; seeks 11 expert opinion beyond the scope of the 12 deposition. I will let Mr. Hess' counsel 13 instruct him. 14 MR. LUDWIG: I am going to 15 instruct him not to answer that question. 16 BY MR. DUBIN: 17 Q. Do you know what total reflection 18 means in the context of PLM dispersion 19 staining? 20 MS. O'DELL: Same objection. 21 MR. LUDWIG: Is the question 22 does he know what total dispersion -- repeat, 23 please? 24 BY MR. DUBIN: 25 Q. Total reflection.</p>	<p style="text-align: right;">Page 105</p> <p>1 record, I believe this is Exhibit 15. 2 MR. DUBIN: Thank you. 3 (Exhibit 15 marked for 4 identification.) 5 BY MR. DUBIN: 6 Q. Do you know the temperature in the 7 lab at MAS? 8 A. We did have an immersion thermometer 9 at station. 10 Q. And what is the temperature? 11 A. It was 21 degrees. 12 Q. And so if we wanted to figure out 13 what color you're calling the particle, we 14 could look at the Su tables or 1.560, and we 15 take your RI given, right, and then we can 16 match that up with a wavelength of light, 17 correct? 18 A. Correct. 19 MS. O'DELL: I object to the 20 question. 21 Where did this table -- what 22 reference did this table come from? 23 MR. DUBIN: You're familiar 24 with the Su tables. We can mark them as an 25 exhibit if it's necessary. I will mark the Su</p>

<p style="text-align: right;">Page 106</p> <p>1 tables so we have them. I will mark the Su 2 tables as Exhibit 35. I guess it must be 3 CX-26.</p> <p>4 MR. LUDWIG: My understanding, 5 this is a document prepared by defense 6 counsel. This is not the Su tables. This is 7 an excerpt, table, picture of Dr. Su, and some 8 other things; is that correct?</p> <p>9 MR. DUBIN: An excerpt and 10 that's why in case you need it, I am marking 11 the entire document as the next exhibit.</p> <p>12 MR. LUDWIG: Okay. Well, now I 13 am objecting to testimony about this document 14 then.</p> <p>15 MR. DUBIN: What is your 16 possible objection about my asking him about 17 the color of the particle in the report that 18 he is here to be deposed about?</p> <p>19 MR. LUDWIG: I am objecting to 20 this exhibit 15, which is a defense exhibit --</p> <p>21 MR. DUBIN: It's --</p> <p>22 MR. LUDWIG: -- that's what I 23 am objecting to.</p> <p>24 MR. DUBIN: Okay. So, 25 Mr. Placitella, do you agree and say that you</p>	<p style="text-align: right;">Page 108</p> <p>1 I understand you're going to 2 put the Su tables that you're referring to in 3 the chat and so if you go ahead and do that 4 and I assume they are going to be marked as 5 exhibit 16; is that correct?</p> <p>6 MR. DUBIN: I think that's the 7 correct number. Exhibit 16 will be the Su 8 tables.</p> <p>9 MS. O'DELL: And if you need to 10 see the Su tables, Mr. Hess, or anything else, 11 just request that, and we'll get it in front 12 of you.</p> <p>13 MR. DUBIN: That's fine. 14 (Exhibit 16 marked for 15 identification.)</p> <p>16 BY MR. DUBIN: 17 Q. Anyway, so you can look at the RI 18 that you gave, 1.564, and that will correspond 19 with a wavelength of light, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And we can see that the wavelength 22 of -- the color associated with that 23 wavelength of light is purple, right, 560 24 nanometers?</p> <p>25 A. In the color chart, that's what it</p>
<p style="text-align: right;">Page 107</p> <p>1 can never use a demonstrative created by 2 counsel as part of examining a witness? 3 Because I am curious about your view on that, 4 Mr. Placitella. So no more creating exhibits 5 to ask -- or demonstratives to ask our 6 witnesses about, right, Mr. Placitella, or do 7 you disagree with --</p> <p>8 MR. LUDWIG: (Inaudible) --</p> <p>9 MR. PLACITELLA: You're now 10 asking me questions?</p> <p>11 MR. DUBIN: I am asking you 12 that question.</p> <p>13 MR. PLACITELLA: How about I 14 ask you a few?</p> <p>15 BY MR. DUBIN: 16 Q. All right. I am going to continue 17 to ask you questions about this document. 18 So going back to this, you can 19 find on the table --</p> <p>20 MS. O'DELL: Morty, excuse me. 21 The reason I asked is so if this is a 22 defense-created exhibit, so we understand 23 what's being discussed and for the record, 24 first; and then, second, so Mr. Hess has an 25 understanding of what's being asked of him.</p>	<p style="text-align: right;">Page 109</p> <p>1 shows.</p> <p>2 Q. So for purposes of your analysis 3 calling this chrysotile, you were treating 4 this particle as if it was purple, correct?</p> <p>5 MS. O'DELL: Object to the 6 form.</p> <p>7 THE WITNESS: I was treating 8 what I could see around the edges through my 9 scope.</p> <p>10 BY MR. DUBIN: 11 Q. And, in fact, if we -- if we look 12 back at what we looked at before, which was 13 reference chrysotile -- we can put that slide 14 back up.</p> <p>15 MR. DUBIN: I don't remember 16 what number it was, but for calling it up, 17 Jake, we can use slide 40.</p> <p>18 BY MR. DUBIN: 19 Q. Reference chrysotile, the refractive 20 index number given for that particle by ISO is 21 1.556; that corresponds to magenta, correct?</p> <p>22 MS. O'DELL: Object to the 23 form.</p> <p>24 We had an objection previously 25 to this exhibit because it calls for an expert</p>

<p style="text-align: right;">Page 110</p> <p>1 opinion and so --</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 him not to answer?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer for the reasons stated</p> <p>6 before.</p> <p>7 MR. DUBIN: Okay. Let's go</p> <p>8 to -- make the next exhibit slide 43.</p> <p>9 MR. KEESTER: I'm sorry, Morty.</p> <p>10 That was 43?</p> <p>11 MR. DUBIN: Yeah, and that will</p> <p>12 be exhibit 17.</p> <p>13 (Exhibit 17 marked for</p> <p>14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. The number -- the wavelength of</p> <p>17 light that you assigned to this particle on</p> <p>18 the left that you're calling chrysotile in</p> <p>19 Johnson & Johnson, you are saying that it is</p> <p>20 even more purple than standard reference</p> <p>21 chrysotile depicted on the right, correct?</p> <p>22 MS. O'DELL: Objection.</p> <p>23 This is an incomplete depiction</p> <p>24 of what's being examined. It is including</p> <p>25 images that are not Dr. -- Mr. Hess', excuse</p>	<p style="text-align: right;">Page 112</p> <p>1 to an ISO record for chrysotile and that is</p> <p>2 beyond the scope of this deposition.</p> <p>3 That's -- that is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Let me finish.</p> <p>7 I'm sorry. Let me finish. I stuttered there.</p> <p>8 Judge Schneider was very clear</p> <p>9 that he is going to be asked about his work</p> <p>10 and not a comparison of his work to others and</p> <p>11 that is expert opinion and that's why we're</p> <p>12 instructing him not to answer.</p> <p>13 MR. DUBIN: Okay. So you're</p> <p>14 instructing him not to answer?</p> <p>15 MR. LUDWIG: Correct.</p> <p>16 MR. DUBIN: Okay.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. I want to make sure and let me raise</p> <p>19 the question.</p> <p>20 As a fact, factually, you</p> <p>21 assigned a darker purple color to that</p> <p>22 particle on the left than standard reference</p> <p>23 chrysotile, correct?</p> <p>24 MS. O'DELL: Objection; that is</p> <p>25 the same objection, and I just also object to</p>
<p style="text-align: right;">Page 111</p> <p>1 me, and it is an inappropriate examination of</p> <p>2 this witness, who is a fact witness, and seeks</p> <p>3 expert opinion, and we to object to it.</p> <p>4 MR. DUBIN: First off, I don't</p> <p>5 understand how you can say every time that he</p> <p>6 is a fact witness and not an expert. He is</p> <p>7 here to be deposed about his polarized light</p> <p>8 microscopy work. There is no way to depose</p> <p>9 someone about their polarized light microscopy</p> <p>10 work without asking them questions that are</p> <p>11 technical in nature.</p> <p>12 And so if your objection is</p> <p>13 that every time I ask him for something about</p> <p>14 his conclusions, it's an expert opinion, then</p> <p>15 you are essentially shutting down this</p> <p>16 deposition. It's --</p> <p>17 MS. O'DELL: That's not</p> <p>18 correct. We're asking -- we have not</p> <p>19 instructed Mr. Hess to not respond to</p> <p>20 questions that are technical. We have</p> <p>21 instructed him not to give expert opinion</p> <p>22 because he is here as a fact witness as you</p> <p>23 know and as the Special Master has ruled.</p> <p>24 And this seeks a comparison</p> <p>25 between the photomicrograph that Mr. Hess took</p>	<p style="text-align: right;">Page 113</p> <p>1 use of this color chart without reference to</p> <p>2 the other charts from Dr. Su's tables that</p> <p>3 take into consideration the temperature and</p> <p>4 other aspects of the table. It's an</p> <p>5 incomplete hypothetical. He --</p> <p>6 MR. DUBIN: I am sorry. I</p> <p>7 don't think you understand the -- I don't</p> <p>8 think you understand how the analysis works.</p> <p>9 Because we already did the temperature of the</p> <p>10 lab when we figured out what nanometer of</p> <p>11 light he was calling the particle. So that is</p> <p>12 not a valid objection scientifically. Are you</p> <p>13 instructing him not to answer?</p> <p>14 MS. O'DELL: I am going to let</p> <p>15 Mr. Hess' counsel instruct him, but I have</p> <p>16 made my objection.</p> <p>17 MR. LUDWIG: I am instructing</p> <p>18 him not to answer.</p> <p>19 MR. PLACITELLA: I would just</p> <p>20 like to -- can you hear me? I would just like</p> <p>21 to add the following objection and I am trying</p> <p>22 to stay out of this.</p> <p>23 If you're taking a tiny, little</p> <p>24 piece of a big slide and then blowing -- and</p> <p>25 then sticking it next to a different slide,</p>

<p style="text-align: right;">Page 114</p> <p>1 there is no guarantee that this accurately 2 depicts what the actual slide looks like, 3 especially on a Zoom presentation. So that's 4 my concern to put on the record. 5 MR. DUBIN: Okay. And my -- 6 MR. PLACITELLA: Now I'll go 7 back to sleep. 8 MR. DUBIN: My response to that 9 is we're comparing the colors associated with 10 two different nanometers of light, which are 11 depicted accurately on the slide, and I 12 understand that you guys are instructing him 13 not to answer and okay. So we'll have to deal 14 with that later. 15 MR. PLACITELLA: No, no, but my 16 objection was beyond that. My objection was 17 how this was put together, who put the colors 18 on what piece of the photograph and, you know, 19 what someone is being asked to interpret over 20 Zoom; that's all. Now I will go back to 21 sleep. 22 MR. DUBIN: Yeah. Okay. 23 BY MR. DUBIN: 24 Q. So let's go back to the Valadez 25 report.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. How can we independently verify with 2 your report that that particle is purple 3 without actually being at your scope? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection; calls 6 for -- objection to form. 7 BY MR. DUBIN: 8 Q. You can respond. 9 A. So I do the documentation on the 10 pictures. 11 Q. But you're telling me that the 12 pictures don't show the purple. 13 So how can we independently -- 14 how can we verify that that particle, in fact, 15 has purple? 16 MS. O'DELL: Objection; 17 misstates his testimony. 18 MR. LUDWIG: Join. 19 THE WITNESS: It's documented 20 as part of the report. It's in the picture. 21 BY MR. DUBIN: 22 Q. So you're saying that purple is in 23 the picture. 24 So where is the purple? 25 MS. O'DELL: Objection;</p>
<p style="text-align: right;">Page 115</p> <p>1 Are you -- are you swearing 2 that particle as purple in -- 3 MS. O'DELL: Object to -- 4 THE COURT REPORTER: Please 5 repeat your question. 6 BY MR. DUBIN: 7 Q. Are you swearing that that particle 8 is purple, the one depicted in 001? 9 MR. LUDWIG: Objection to form. 10 THE WITNESS: No. The particle 11 itself interior-wise has yellow. I utilized 12 what I could find through the scope around the 13 edges or at the edge. 14 BY MR. DUBIN: 15 Q. So are you telling me that that 16 particle we're looking at is somehow entirely 17 surrounded with purple, but we just can't see 18 it? 19 MS. O'DELL: Objection to the 20 form; asked and answered. 21 MR. LUDWIG: Argumentative. 22 BY MR. DUBIN: 23 Q. You can respond. 24 A. Based on what I saw through the 25 microscope.</p>	<p style="text-align: right;">Page 117</p> <p>1 misstates his testimony. 2 BY MR. DUBIN: 3 Q. You can respond. 4 A. I make my determinations on what I 5 can see through the scope and it's represented 6 to the best that I can get it on the screen in 7 the picture. 8 Q. Okay. But can we verify that with 9 the picture? Can we verify that in some way? 10 A. Other than what's on the picture, 11 Counselor, I cannot speculate. 12 MR. LUDWIG: Do you need it 13 blown up? 14 MR. DUBIN: We can blow it up. 15 MR. PLACITELLA: There it is. 16 BY MR. DUBIN: 17 Q. Do you see purple or red on the talc 18 plates in this image? To the extent you're 19 claiming you see it on that particle, do you 20 see it on all the rounded talc plates? 21 A. On this image, I can just barely. 22 Q. On the rounded talc plates, right? 23 MR. LUDWIG: Listen to the 24 question. 25 BY MR. DUBIN:</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. You can see those kind of edge 2 effects on the talc plates as well, right? 3 MS. O'DELL: I am -- the screen 4 is about ten feet away from Mr. Hess. I am 5 handing him the Valadez report on my computer 6 so he can see it more clearly. 7 BY MR. DUBIN: 8 Q. Do you see those same kind of edge 9 effects on all -- on the talc plates? 10 A. I can see parts, yes. 11 Q. But talc plates aren't purple in 12 1.560 oil, right, and they are not red, 13 correct? 14 MS. O'DELL: And if you need to 15 make it bigger or smaller, Mr. Hess, you can 16 just -- you can touch my screen. 17 BY MR. DUBIN: 18 Q. You can focus on any of these 19 rounded talc plates and you'll see the same 20 edge effects, right? 21 MS. O'DELL: Object to the 22 form. 23 THE WITNESS: Similar. 24 BY MR. DUBIN: 25 Q. So what refractive index number</p>	<p style="text-align: right;">Page 120</p> <p>1 A. At least my opinion of what I am 2 seeing not only on the dispersion staining, 3 but also on the appearance of the structure, 4 whether it shows fibrousity. 5 Q. You are basing your refractive 6 index -- 7 MS. O'DELL: Excuse me. Were 8 you finished with your answer? 9 THE WITNESS: It's based on 10 what I see through the scope and my 11 examination of the particle. 12 BY MR. DUBIN: 13 Q. You are basing your assessment of 14 the refractive index of this particle that 15 you're calling chrysotile based on edge 16 effects that are also present on the rounded 17 talc plates, correct? 18 MS. O'DELL: Objection; 19 misstates his testimony. 20 BY MR. DUBIN: 21 Q. You can respond. 22 A. I base it on what I see around the 23 particle itself. 24 Q. And those -- again, my question is, 25 what you're claiming -- the effect that you're</p>
<p style="text-align: right;">Page 119</p> <p>1 would you assign to any of the talc plates 2 that also have that edge effect? What would 3 you -- what is the refractive index of the 4 talc plates? 5 MS. O'DELL: Object to the 6 form; expert opinion. 7 MR. LUDWIG: This is an expert 8 opinion. I am going to instruct him not to 9 answer that one. 10 BY MR. DUBIN: 11 Q. Mr. Hess, you're basing your calling 12 this particle chrysotile on edge effects that 13 are also present on the talc plates 14 themselves; isn't that right? 15 MS. O'DELL: Objection; 16 misstates his testimony. 17 BY MR. DUBIN: 18 Q. You can respond. 19 MS. O'DELL: Objection; 20 misstates his testimony. 21 MR. LUDWIG: Join. 22 MS. O'DELL: Seeks expert 23 opinion. 24 BY MR. DUBIN: 25 Q. You can respond.</p>	<p style="text-align: right;">Page 121</p> <p>1 claiming to see around that particle you're 2 calling chrysotile is also present on the 3 round talc plates, correct? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection, asked 6 and answered. 7 MS. O'DELL: Misstates his 8 testimony. 9 BY MR. DUBIN: 10 Q. You can respond. 11 A. I am basing it on my determination 12 from what's around the particle. I do not 13 take into account what's around the talc. 14 Q. Okay. So you don't consider whether 15 or not, because this effect is also on the 16 talc plates, whether it's an artifact of 17 your -- of your analysis? You don't look at 18 the talc plates to see whether you see the 19 exact same effect on the talc plates? 20 MS. O'DELL: Objection; 21 misstates his testimony. It's not what he 22 testified a moment ago. 23 BY MR. DUBIN: 24 Q. Are these talc plates, are those 25 also purple, according to you, if you're</p>

<p style="text-align: right;">Page 122</p> <p>1 looking at the edge effects?</p> <p>2 A. What I am seeing on there is more of</p> <p>3 a red, but it's not in focus to the point that</p> <p>4 I would be able to make a determination.</p> <p>5 Q. So would the refractive -- would the</p> <p>6 refractive index value for those talc plates</p> <p>7 correspond to red?</p> <p>8 MS. O'DELL: Objection.</p> <p>9 He was just saying it wasn't in</p> <p>10 focus and you can't make that determination</p> <p>11 from a photomicrograph on a screen.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. So are those talc plates -- does the</p> <p>14 refractive index that you assigned to them</p> <p>15 based on their edges, does that correspond to</p> <p>16 red?</p> <p>17 MS. O'DELL: Same objection.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. You can respond.</p> <p>20 A. I would not give it the same.</p> <p>21 THE COURT REPORTER: Please</p> <p>22 repeat your answer.</p> <p>23 MR. LUDWIG: I think it was: I</p> <p>24 would not give it the same.</p> <p>25 I think you were still talking?</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. PLACITELLA: -- trying to</p> <p>2 keep the record clean.</p> <p>3 MR. DUBIN: Okay.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. What CSDS color are you assigning to</p> <p>6 the talc plates that we're looking at?</p> <p>7 MS. O'DELL: Object to the</p> <p>8 form; that seeks expert opinion. He is not</p> <p>9 a -- he did not analyze these particular talc</p> <p>10 particles. He didn't make findings in the</p> <p>11 report.</p> <p>12 To ask him to do it on the fly,</p> <p>13 in a Zoom is an expert opinion and beyond the</p> <p>14 scope of what he did for the report and we</p> <p>15 object on that basis.</p> <p>16 MR. DUBIN: Are you instructing</p> <p>17 him not to answer the question?</p> <p>18 MR. LUDWIG: I was just going</p> <p>19 to say, exactly, and I am instructing him not</p> <p>20 to answer that question because he is not --</p> <p>21 it's not the scope. Him doing an analysis of</p> <p>22 a talc particle on the fly is not what the</p> <p>23 Judge -- is not the purpose of this</p> <p>24 deposition.</p> <p>25 MR. DUBIN: Okay. You have</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: No; that's it. I</p> <p>2 would not give it the same.</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. So what is the CSDS color of, let's</p> <p>5 say, this large talc plate towards the bottom</p> <p>6 left? What is the CSDS color that you would</p> <p>7 use to assign a refractive index to that</p> <p>8 particle?</p> <p>9 MS. O'DELL: Which particle?</p> <p>10 MR. PLACITELLA: I will place</p> <p>11 an objection before he answers and I know</p> <p>12 you're doing the best you can, but at this</p> <p>13 point, at least on the screen that I am</p> <p>14 seeing, this image is pretty blurry, you know,</p> <p>15 but you did -- you're doing the best you can.</p> <p>16 MR. DUBIN: This is the image</p> <p>17 that we have from Dr. Longo.</p> <p>18 MR. PLACITELLA: Well, that's</p> <p>19 not necessarily the image. This is a blowup</p> <p>20 on a Zoom, you know.</p> <p>21 MR. DUBIN: He also has the</p> <p>22 actual report in front of him on a computer.</p> <p>23 Now what?</p> <p>24 MR. PLACITELLA: Just --</p> <p>25 MR. DUBIN: Okay.</p>	<p style="text-align: right;">Page 125</p> <p>1 instructed him not to answer. We'll just deal</p> <p>2 with it in court later.</p> <p>3 Let's look at the second image,</p> <p>4 002.</p> <p>5 MS. O'DELL: Okay. What image</p> <p>6 are you looking at and what page?</p> <p>7 MR. DUBIN: Okay. So, Jake,</p> <p>8 can you give the page? This is the image of</p> <p>9 CSM 002.</p> <p>10 MR. KEESTER: So my PDF is page</p> <p>11 38, but since your report seems to be one page</p> <p>12 less, it will probably be page 37, but it is</p> <p>13 CSM-002.</p> <p>14 MS. O'DELL: Okay.</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. What color is that particle?</p> <p>17 A. Can you zoom in, please?</p> <p>18 Q. Sure.</p> <p>19 A. The particle itself, yellow with</p> <p>20 some pale blue.</p> <p>21 Q. Okay. And do you see that there is</p> <p>22 a rounded talc plate? If you move your eye</p> <p>23 from the top of the two arrows over towards</p> <p>24 the left, there is a rounded talc plate.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. LUDWIG: Objection. 2 Once again, you're asking him 3 to analyze what you claim to be a talc 4 particle on the fly; that calls for expert 5 testimony. I am instructing him not to answer 6 that question. 7 BY MR. DUBIN: 8 Q. You said you have done PLM 9 dispersion staining analysis for 30 years, 10 Mr. Hess? 11 A. That is correct. 12 Q. Are you not -- are you not able to 13 tell me -- to follow over on the image and 14 look at this talc plate with me? Is that 15 beyond your experience and training? 16 MR. LUDWIG: I am going to 17 object. 18 This is argumentative. His 19 experience is under the microscope. So I am 20 objecting to the form of the question. It's 21 argumentative. 22 BY MR. DUBIN: 23 Q. Is the particle you're calling 24 chrysotile here, is that essentially the same 25 color as the talc plates in the image?</p>	<p style="text-align: right;">Page 128</p> <p>1 identification.) 2 BY MR. DUBIN: 3 Q. You -- for purposes of your 4 analysis, you're calling this particle 5 somewhere between a magenta and a purple for 6 purposes of your analysis, right? 7 MS. O'DELL: Just wait a 8 minute. 9 What particle is this? 10 MR. DUBIN: This is the same 11 particle, CSM 002. 12 BY MR. DUBIN: 13 Q. You're calling it somewhere between 14 a magenta and a purple for purposes of your 15 analysis? 16 A. I am calling the edge that I saw. 17 Q. You're calling the edge that you saw 18 purple and magenta? Is that what you're 19 saying? 20 A. That is correct. 21 Q. The same type of purple or red 22 colors that are on the talc plates? 23 MS. O'DELL: Object to the 24 form. 25 MR. LUDWIG: Object to the</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. LUDWIG: Objection, same 2 objection. I am instructing him not to 3 answer. 4 MR. DUBIN: Okay. Can't wait 5 to be heard on these. All right. 6 BY MR. DUBIN: 7 Q. Do you know what -- if we go down 8 and we look at the RI value, RI 1.565, do you 9 know what color that -- by reporting that 10 refractive index value for this particle, do 11 you know what color you were calling it? 12 A. I don't recall. 13 MR. DUBIN: Let's go to the 14 slide, Jake, and we'll make that the next in 15 order, the slide for this particle; that will 16 be exhibit -- are we on 17 or 18? 17 THE COURT REPORTER: One moment 18 and I can verify. 19 MR. DUBIN: Sure. I think it's 20 18. 21 THE COURT REPORTER: Yes, this 22 is Exhibit 18. 23 MR. DUBIN: Why don't we call 24 up that slide and we can put it in chat. 25 (Exhibit 18 marked for</p>	<p style="text-align: right;">Page 129</p> <p>1 form. 2 I instruct you not to answer. 3 BY MR. DUBIN: 4 Q. Do you know -- as you adjust the 5 focus on a microscope up and down, do you know 6 whether you can -- if things are out of focus, 7 you can see a red edge on particles? Are you 8 familiar with that? 9 A. I have observed that. 10 Q. And so one way that you can get 11 these types of edges around particles is if 12 they are just not -- if they are -- is your 13 focus, depending on your focus, right? 14 MS. O'DELL: Object to the 15 form. 16 THE WITNESS: Correct. 17 BY MR. DUBIN: 18 Q. And without these edges, without 19 these sort of red colors at the edges, then 20 the CSDS color that you would have had to 21 assign to the particle would be -- would 22 correspond to yellow, right? 23 MR. LUDWIG: Objection to form. 24 That's calling for an expert 25 analysis, which he is not here to present</p>

<p style="text-align: right;">Page 130</p> <p>1 today.</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 your witness not to answer yet again?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer that one, yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. How can you tell whether or not the</p> <p>9 red that you're seeing on the edges is an</p> <p>10 artifact of focus?</p> <p>11 A. By assuring that my particle is in</p> <p>12 focus.</p> <p>13 Q. Mr. Placitella was complaining that</p> <p>14 the image is blurry.</p> <p>15 Does it look completely in</p> <p>16 focus to you?</p> <p>17 MS. O'DELL: Object to the</p> <p>18 form.</p> <p>19 MR. LUDWIG: Join.</p> <p>20 THE WITNESS: I base it on what</p> <p>21 I see through the scope.</p> <p>22 BY MR. DUBIN:</p> <p>23 Q. Do you know whether or not edge</p> <p>24 effects like that can be created by total</p> <p>25 refraction even for an in focus particle? Do</p>	<p style="text-align: right;">Page 132</p> <p>1 MR. DUBIN: You asked -- okay.</p> <p>2 I have told you the answer. I am asking him</p> <p>3 about it.</p> <p>4 MR. KEESTER: Sorry to jump in.</p> <p>5 I can't share a slide while I have it open.</p> <p>6 It's the way Microsoft applications work. So</p> <p>7 I am sharing them the moment I close out of</p> <p>8 PowerPoint.</p> <p>9 MS. O'DELL: Okay. Thank you.</p> <p>10 MR. DUBIN: Okay. We can go</p> <p>11 back to the Valadez report. We can put that</p> <p>12 one in chat.</p> <p>13 BY MR. DUBIN:</p> <p>14 Q. And as I said, I believe there was a</p> <p>15 question pending before the objection.</p> <p>16 Are you familiar with the fact</p> <p>17 that the phenomena of total reflection can</p> <p>18 create these kind of edge effects for</p> <p>19 particles?</p> <p>20 MR. LUDWIG: Can that be reread</p> <p>21 back? I'm sorry. There was a break in the</p> <p>22 question, maybe distorted by the Zoom. I am</p> <p>23 sorry.</p> <p>24 MR. DUBIN: It's fine. I</p> <p>25 already asked him. He didn't know what the</p>
<p style="text-align: right;">Page 131</p> <p>1 you know that?</p> <p>2 MS. O'DELL: Objection to the</p> <p>3 form; calls for expert opinion.</p> <p>4 Morty, this slide has not been</p> <p>5 put in the chat and so we would request that</p> <p>6 it be put in the chat.</p> <p>7 MR. DUBIN: We're doing it.</p> <p>8 Obviously, it takes a little time to do the</p> <p>9 slides and it's not like you're not seeing the</p> <p>10 whole document, but we'll put them in chat.</p> <p>11 MS. O'DELL: We thank you and</p> <p>12 we need to see them. It's important.</p> <p>13 The second thing is, where did</p> <p>14 this color bar, color chart come from on the</p> <p>15 side and -- because it's unclear from what's</p> <p>16 being --</p> <p>17 MR. DUBIN: These are slides</p> <p>18 that have been presented to Dr. Longo before</p> <p>19 for his testimony and that he has agreed to.</p> <p>20 So these are -- this type of color bar was</p> <p>21 used in the 104 hearings with Dr. Longo, in</p> <p>22 addition to being used in his Eagles and Lonzo</p> <p>23 depositions.</p> <p>24 MS. O'DELL: That's completely</p> <p>25 immaterial.</p>	<p style="text-align: right;">Page 133</p> <p>1 phenomena was earlier. So it's fine. Don't</p> <p>2 worry about it. This next -- let's go to CSM</p> <p>3 003.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. What color is the particle?</p> <p>6 A. The particle appears to be yellow.</p> <p>7 Q. Do you know at -- by assigning RI</p> <p>8 1.568, do you know what color you were calling</p> <p>9 this particle?</p> <p>10 A. Not without the charts available.</p> <p>11 Q. All right. You were -- do you know</p> <p>12 you were calling this particle somewhere</p> <p>13 between a magenta and purple?</p> <p>14 MS. O'DELL: Objection to form.</p> <p>15 MR. LUDWIG: Can you zoom in on</p> <p>16 the particle, please?</p> <p>17 MR. DUBIN: Sure.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. You're treating this particle for</p> <p>20 purposes of your analysis as if it is magenta</p> <p>21 and purple?</p> <p>22 MS. O'DELL: Objection to the</p> <p>23 form.</p> <p>24 He said he can't -- cannot</p> <p>25 determine that without the charts and other</p>

<p style="text-align: right;">Page 134</p> <p>1 materials used in --</p> <p>2 MR. LUDWIG: (Inaudible) it's</p> <p>3 clear to you. I mean, we're dealing with a</p> <p>4 situation where it's ten, fifteen feet from</p> <p>5 you; so.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. You're the analyst who did this</p> <p>8 work.</p> <p>9 What color were you calling it?</p> <p>10 MS. O'DELL: And just for the</p> <p>11 record, what's the page of the Valadez report?</p> <p>12 MR. KEESTER: Mine is page 43.</p> <p>13 Yours is probably page 42.</p> <p>14 MS. O'DELL: Thank you.</p> <p>15 MR. DUBIN: And maybe it will</p> <p>16 help. We can make exhibit 19 slide 48 and put</p> <p>17 that up.</p> <p>18 MR. LUDWIG: Mr. Dubin, we have</p> <p>19 been going for a little --</p> <p>20 MR. DUBIN: We'll break after</p> <p>21 this slide and we'll take lunch.</p> <p>22 MR. LUDWIG: We'll take a lunch</p> <p>23 break after this slide.</p> <p>24 (Exhibit 19 marked for</p> <p>25 identification.)</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Not the particle, what you're</p> <p>2 calling the edge effects, right, or the edges,</p> <p>3 you're saying?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. And we can go back to the</p> <p>6 image in the Valadez, same image, and you can</p> <p>7 see you have these edges, the same types of</p> <p>8 edges on these -- on many of the rounded</p> <p>9 structures that are talc plates, right?</p> <p>10 MS. O'DELL: Objection to the</p> <p>11 form.</p> <p>12 MR. LUDWIG: Same objection.</p> <p>13 I instruct him not to answer.</p> <p>14 Once again, on-the-fly analysis of talc</p> <p>15 plates.</p> <p>16 MR. DUBIN: You're instructing</p> <p>17 him not to answer?</p> <p>18 MR. LUDWIG: Correct.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Okay. And, again, I want to</p> <p>21 understand your experience, your personal</p> <p>22 experience with these types of edge effects,</p> <p>23 and I just want to ask you about an image,</p> <p>24 whether it's something that you have seen</p> <p>25 before.</p>
<p style="text-align: right;">Page 135</p> <p>1 BY MR. DUBIN:</p> <p>2 Q. Do you know that the refractive</p> <p>3 index that you have assigned to this particle</p> <p>4 corresponds to the colors magenta and purple?</p> <p>5 Are you aware of that?</p> <p>6 A. I do see --</p> <p>7 MR. PLACITELLA: I have the</p> <p>8 same objection I had before. This is even</p> <p>9 less clear than the last one.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. Okay. Are you aware that the</p> <p>12 refractive index numbers you assigned to this</p> <p>13 particle are -- correspond to magenta and</p> <p>14 purple?</p> <p>15 MS. O'DELL: Object to the</p> <p>16 form.</p> <p>17 He has already testified he</p> <p>18 would need the charts and other information.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Well, just -- do you know that? Are</p> <p>21 you aware that that's the color you said this</p> <p>22 particle was?</p> <p>23 A. I am.</p> <p>24 Q. Okay.</p> <p>25 A. But not the particle.</p>	<p style="text-align: right;">Page 137</p> <p>1 MR. DUBIN: And we'll mark that</p> <p>2 as exhibit 20. It will be CX-56.</p> <p>3 (Exhibit 20 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. So Cargille glass, Cargille glass</p> <p>7 has a single refractive index, right?</p> <p>8 MS. O'DELL: Objection to the</p> <p>9 form.</p> <p>10 What's being shown on the</p> <p>11 screen?</p> <p>12 MR. DUBIN: These are images of</p> <p>13 Cargille glass in dispersion staining. I am</p> <p>14 asking him about his experience and his</p> <p>15 background, experience, and training.</p> <p>16 MS. O'DELL: He is not here as</p> <p>17 an expert witness and --</p> <p>18 MR. LUDWIG: Right. So --</p> <p>19 MS. O'DELL: -- this is beyond</p> <p>20 the scope. Excuse me. Counsel, go ahead.</p> <p>21 MR. LUDWIG: I'm sorry. So I</p> <p>22 am instructing the witness not to answer.</p> <p>23 Exactly.</p> <p>24 BY MR. DUBIN:</p> <p>25 Q. And I am going to keep asking you</p>

<p style="text-align: right;">Page 138</p> <p>1 some questions about this and if your attorney 2 wants to object and say for you not to answer 3 to each of them, that's fine. We'll do that. 4 Can you see -- are you familiar 5 with this phenomena that even if you look at a 6 particle with a single refractive index, 7 right, for example, blue here, you can see 8 sometimes these edge effects such as the red 9 or the purple that we're seeing in this image? 10 Are you familiar with the fact 11 that that happens? 12 MS. O'DELL: Objection; beyond 13 the scope of the deposition; beyond the scope 14 of this witness' testimony; assumes facts not 15 in evidence. 16 BY MR. DUBIN: 17 Q. Do you know how to determine -- 18 sorry. 19 MR. DUBIN: Is there 20 instruction not to answer that? 21 MR. LUDWIG: There is 22 instruction not to answer that, yes. 23 BY MR. DUBIN: 24 Q. Do you know how to determine in 25 these kind of circumstances what the true CSDS</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. O'DELL: Join. 2 BY MR. DUBIN: 3 Q. However, you, when you're looking at 4 the yellow particles in your analysis, you 5 take these edge effects and you base your 6 calculations on them, correct? 7 MR. LUDWIG: Same objection; 8 same instruction. 9 MS. O'DELL: Misstates the 10 record and misleading and argumentative. 11 MR. DUBIN: All right. 12 BY MR. DUBIN: 13 Q. Do you have experience working with 14 and analyzing Cargille glass? 15 A. Not analyzing, but utilizing it -- 16 Q. Have you -- 17 A. -- I do recall. 18 Q. Have you ever observed these types 19 of phenomena when looking at Cargille glass? 20 A. I have not. 21 Q. Okay. What is a -- do you know how 22 to perform a Becke line analysis? 23 MS. O'DELL: Beyond the scope 24 of the reports in this case and seeks expert 25 opinion.</p>
<p style="text-align: right;">Page 139</p> <p>1 color is? Do you know how to do that? 2 MR. LUDWIG: Same objection. 3 MR. DUBIN: Are you instructing 4 your witness not -- 5 MR. LUDWIG: I am. 6 MR. DUBIN: -- to answer? 7 MS. O'DELL: Join. 8 MR. DUBIN: Okay. 9 BY MR. DUBIN: 10 Q. Are you familiar with why you can 11 get these types of red edges around certain 12 particles that do not reflect the true central 13 stop dispersion staining color of the 14 particle? Do you know anything about that? 15 MR. LUDWIG: Same objection; 16 same instruction. 17 MR. DUBIN: Okay. 18 MS. O'DELL: Join. 19 BY MR. DUBIN: 20 Q. If you were to base your calculation 21 of the refractive index of this piece of 22 Cargille glass on the red edge here, you would 23 be getting the wrong result, correct? 24 MR. LUDWIG: Same objection; 25 same instruction.</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. DUBIN: Are you -- 2 MR. LUDWIG: Join. 3 MR. DUBIN: -- instructing him 4 not to answer? 5 MR. LUDWIG: Not to answer. 6 BY MR. DUBIN: 7 Q. Do you know how to use a Becke line 8 analysis to determine in a situation such as 9 we're looking at here what the correct CSDS 10 color is? 11 MR. LUDWIG: Same objection; 12 same instruction. 13 MS. O'DELL: Join. 14 BY MR. DUBIN: 15 Q. Have you performed any Becke line 16 analysis with respect to any of the particles 17 that you're claiming are chrysotile in Johnson 18 & Johnson? 19 A. I have not. 20 Q. Okay. 21 MR. PLACITELLA: Morty, you 22 look really hungry. 23 MR. DUBIN: All right. We can 24 take lunch now. How long do you guys want? 25 We can go off the record.</p>

<p style="text-align: right;">Page 142</p> <p>1 VIDEOGRAPHER: The time is 2 12:38 p.m. We're off the record. 3 (Break held off the record.) 4 VIDEOGRAPHER: The time is 5 1:28 p.m. We are back on the record. 6 BY MR. DUBIN: 7 Q. All right. Well, we'll see. If 8 there is an objection to this as well and this 9 topic, then we'll move on from it, but I need 10 to ask it to make sure. 11 So I put together a slide and I 12 put together some excerpts from the Valadez 13 report just so they are all in one spot for 14 the backup of this slide. 15 We'll mark the backup, which is 16 CX-12, as the next exhibit in order. I guess 17 that's 20? 18 THE COURT REPORTER: If you 19 would like me to check, give me one moment. 20 MR. DUBIN: Sure. Thanks. 21 MR. KEESTER: I believe that's 22 21. 23 MR. DUBIN: Twenty-one. 24 THE COURT REPORTER: I will 25 take counsel's assertion it's 21 without</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. DUBIN: 2 Q. Okay. But it is true, Mr. Hess, 3 that when you're calling particles chrysotile 4 in Johnson & Johnson, you're basing that not 5 on the color of the particle that you're 6 seeing, but on the color of the edge effects 7 that you're seeing, right? 8 A. Focused at the edge, this -- the way 9 everything I do is set up initially with the 10 alignment and centering of all the objectives 11 and lenses with the scope, with the 12 illumination lamp full, field diaphragm open, 13 and I scan for a suspicious object. 14 When I focus in on what appears 15 to be suspicious, I first make sure that I can 16 see signs of fibrousity. Then I go back to 17 dispersion staining and I will utilize what's 18 in Dr. Su's paper, looking at the edge, as 19 stated on page 3 and page 5, utilizing what's 20 on page 5, which specifically shows or 21 indicates to me looking at the edge -- 22 Q. Page 5 of what? 23 A. -- specifically says: At particle 24 edge. 25 Q. Page 3 and page 5 of what?</p>
<p style="text-align: right;">Page 143</p> <p>1 checking. 2 MR. DUBIN: Okay. It's 21 3 then. All right. So we'll make that 21 and 4 can you just put it in chat, Jake? 5 MR. KEESTER: Already done. 6 MR. DUBIN: And then the slide 7 which will be 22 and that's slide 48. 8 (Exhibits 21 and 22 marked for 9 identification.) 10 BY MR. DUBIN: 11 Q. I tried to ask you this already, 12 Mr. Hess, but the same type of edge effects 13 that you're relying on to call particles 14 chrysotile in Johnson & Johnson are also 15 present on talc plates in your analysis; is 16 that true? 17 MS. O'DELL: Objection. This 18 is beyond the scope of the deposition and 19 Mr. Hess' testimony. 20 Further, the way that these 21 particles are depicted from who knows what is 22 misleading and not representative of what was 23 actually in the reports. 24 MR. LUDWIG: I will join and 25 instruct the witness not to answer.</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. O'DELL: He is not 2 finished, Morty. 3 BY MR. DUBIN: 4 Q. Sorry. 5 A. And then I -- best I can or I will 6 do everything I can to make sure that what I 7 am seeing is best represented in the 8 photograph that I take and I am not seeing the 9 things on the screen, I use the scope. 10 Q. So are you telling me that in order 11 to understand your work and the calls that 12 you're making, that I -- someone needs to be 13 actually looking through your microscope? 14 MR. LUDWIG: Objection. 15 MS. O'DELL: Objection. 16 BY MR. DUBIN: 17 Q. You can respond. 18 A. No, sir. I am sure there is plenty 19 of the sample available where someone at your 20 client's place can do the same thing. 21 Q. Well, just to understand what the 22 call is that you're making on a particular 23 particle, do I need to be looking through your 24 scope? 25 A. It's documented in the photographs</p>

<p style="text-align: right;">Page 146</p> <p>1 and the reports that are submitted.</p> <p>2 Q. So if we don't see something in the</p> <p>3 photograph that you're claiming is there, then</p> <p>4 it wasn't really there?</p> <p>5 MS. O'DELL: Objection.</p> <p>6 MR. LUDWIG: Objection.</p> <p>7 MS. O'DELL: Argumentative.</p> <p>8 MR. LUDWIG: Objection to form;</p> <p>9 argumentative.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. You can respond.</p> <p>12 A. It doesn't mean that it wasn't</p> <p>13 there. I use the scope, not the screen.</p> <p>14 Q. Okay. You mentioned illumination.</p> <p>15 So I just want to talk about that again for a</p> <p>16 second. We can go back to the Valadez report.</p> <p>17 We can go to -- let's go to the first image,</p> <p>18 the No. 1. I think it's thirty- -- okay.</p> <p>19 Is it your testimony that the</p> <p>20 Leica microscope that you're using can't take</p> <p>21 images that are any brighter than this?</p> <p>22 A. I believe I have already answered</p> <p>23 that question.</p> <p>24 Q. I'm asking about this specific</p> <p>25 image.</p>	<p style="text-align: right;">Page 148</p> <p>1 seeing here in image 62?</p> <p>2 MS. O'DELL: Let me just --</p> <p>3 what is being displayed on the screen?</p> <p>4 MR. DUBIN: I am just using it</p> <p>5 for demonstrative purposes right now and I am</p> <p>6 asking him a question about his microscope.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. Is it able to take images that are</p> <p>9 as bright as the one that we see on the</p> <p>10 screen?</p> <p>11 MS. O'DELL: Object to the --</p> <p>12 object to the question; calls for expert</p> <p>13 testimony. It's beyond the scope of what he</p> <p>14 did for purposes of these reports.</p> <p>15 MR. LUDWIG: I want to add that</p> <p>16 these images call for speculation. I mean, he</p> <p>17 is being asked to analyze an image on</p> <p>18 PowerPoint on an unknown -- an unknown source.</p> <p>19 I think this, once again, calls</p> <p>20 for expert testimony to make that comparison.</p> <p>21 So I am going to instruct him not to answer</p> <p>22 the question.</p> <p>23 MR. DUBIN: I am asking him</p> <p>24 about his microscope, his illumination</p> <p>25 settings, what he sees under the microscope,</p>
<p style="text-align: right;">Page 147</p> <p>1 Do you have an answer, sir?</p> <p>2 A. In reference to this image, as I</p> <p>3 recall the previous image was something a</p> <p>4 little different. So I would have to say,</p> <p>5 yes.</p> <p>6 Q. I'm sorry. I don't understand.</p> <p>7 So to make sure the question is</p> <p>8 clear, is it your testimony that the Leica</p> <p>9 microscope cannot take any brighter image than</p> <p>10 what we see here?</p> <p>11 MS. O'DELL: Objection to the</p> <p>12 form; asked and answered.</p> <p>13 THE WITNESS: I cannot answer</p> <p>14 as to the actual scope itself, but in my</p> <p>15 experience with it, this is the brightest I</p> <p>16 can get it.</p> <p>17 MR. DUBIN: I just want to show</p> <p>18 you -- we'll mark it as the next exhibit in</p> <p>19 order. I guess it's -- now we're on 23,</p> <p>20 CX-62.</p> <p>21 (Exhibit 23 marked for</p> <p>22 identification.)</p> <p>23 BY MR. DUBIN:</p> <p>24 Q. Is your Leica microscope able to</p> <p>25 take images that are as bright as what we're</p>	<p style="text-align: right;">Page 149</p> <p>1 and I'm asking him whether his microscope that</p> <p>2 he knows and he works with is capable of</p> <p>3 producing an image at this illumination level</p> <p>4 and my question stands.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Can you answer that for me,</p> <p>7 Mr. Hess?</p> <p>8 MR. LUDWIG: And I am making</p> <p>9 the same objection I made and I am</p> <p>10 incorporating the same response and</p> <p>11 instructing him not to answer.</p> <p>12 You're asking for a comparison.</p> <p>13 BY MR. DUBIN:</p> <p>14 Q. Okay. I will tell you what this is,</p> <p>15 Mr. Hess. This was an image that was taken by</p> <p>16 Dr. Su on the same type of microscope that</p> <p>17 you're using.</p> <p>18 Are you testifying that your</p> <p>19 microscope cannot take images at this level of</p> <p>20 illumination?</p> <p>21 MS. O'DELL: Objection; calls</p> <p>22 for expert testimony, it's beyond the scope of</p> <p>23 this deposition, and he has testified already</p> <p>24 to the level of illumination that he has used</p> <p>25 in the photomicrographs for these reports.</p>

<p style="text-align: right;">Page 150</p> <p>1 MR. LUDWIG: Once again, I am 2 going to incorporate my previous objections 3 and instruct him not to answer. Dr. Su -- 4 MR. DUBIN: If you're going to 5 instruct him not to -- if you're going to 6 instruct him not to answer, we don't have 7 to -- 8 MR. LUDWIG: I instruct him not 9 to answer then. 10 MR. DUBIN: And that's fine. 11 Because we will be arguing about this at some 12 point. 13 BY MR. DUBIN: 14 Q. But let me ask you again, Mr. Hess, 15 are you testifying under oath that the images 16 that you have for, for example, in the Valadez 17 report we have looked at are taken at as high 18 an illumination setting as the microscope 19 goes? Are you testifying to that? 20 MS. O'DELL: Asked and 21 answered. 22 THE WITNESS: Yes. 23 BY MR. DUBIN: 24 Q. What is the correct formula for 25 determining birefringence?</p>	<p style="text-align: right;">Page 152</p> <p>1 dispersion staining colors for chrysotile in 2 1.550 in parallel and perpendicular? 3 A. In parallel, generally, if you can 4 get a single fiber, which is what I understand 5 that gives you the best, but, unfortunately, 6 in chrysotile, they are too small. So they 7 deal with bundles. 8 But, generally, you're looking 9 in the blue, magenta range; and in gamma, 10 based on the Canadian chrysotile, as I 11 understand it, and perpendicular, which is the 12 alpha, would be in the lighter blue range. 13 Q. Okay. And what is your 14 understanding of the CSDS colors associated 15 with Calidria in 1.550? 16 A. I am not familiar with that 17 particular table. 18 Q. Okay. So you don't have a view of 19 what colors Calidria asbestos demonstrates in 20 parallel or perpendicular in 1.550? 21 A. From my experience. 22 Q. Okay. So what is it? 23 A. Well, it ranges between the 24 Calidria -- excuse me -- between the Canadian 25 chrysotile standard and a yellow gold color</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I keep a manual handy for 2 mathematics. 3 Q. What manual? 4 A. I have the McCrone manual and other 5 manuals within the laboratory covering what 6 McCrone covers in his coursebook. 7 Q. Do you recall the name of the 8 manual? 9 A. No, I do not recall. 10 Q. Okay. Do you recall anything about 11 it other than it's a manual? When it's from? 12 Who the author is? Anything? 13 A. The author is McCrone. 14 Q. Okay. Do you recall what the 15 formula is, how you -- what numbers do you 16 use? What -- how do you calculate? 17 A. I don't recall. That's why we keep 18 reference materials. 19 Q. Are you the one who does the 20 birefringence calculations for these reports? 21 A. No. 22 Q. Who does them? 23 A. I believe it's part of what 24 Dr. Longo puts together. 25 Q. Okay. What are the correct central</p>	<p style="text-align: right;">Page 153</p> <p>1 gamma. 2 Q. Okay. So you're saying in parallel 3 it's -- you're claiming that Calidria will be 4 between a yellow gold and a magenta. 5 Is that what you're saying? 6 A. That's been my experience. 7 Q. Okay. Are you aware of any 8 scientific references that say that Calidria 9 in 1.550 will be yellow gold in parallel? 10 A. I am not aware of any. 11 Q. Can -- in your experience can talc 12 be yellow gold in parallel? 13 A. In my experience what I have seen 14 that ends up what I will call talc, that's 15 generally a very, very pale yellow at best to 16 white. 17 Q. So talc should be pale yellow to 18 white. 19 MR. DUBIN: Can we go back to 20 the Zimmerman image -- go back to the 21 Zimmerman report for a second. 22 BY MR. DUBIN: 23 Q. Looking again at the Zimmerman 24 image, we see some talc plates here. 25 Why isn't your talc pale yellow</p>

<p style="text-align: right;">Page 154</p> <p>1 to white in this image?</p> <p>2 MR. LUDWIG: (Inaudible.)</p> <p>3 THE COURT REPORTER: I couldn't</p> <p>4 hear you, sir. Please repeat.</p> <p>5 MR. LUDWIG: I said, Paul, if</p> <p>6 you need it zoomed in, please feel free to ask</p> <p>7 it.</p> <p>8 THE WITNESS: Well, one, my</p> <p>9 previous comment was based on fibrous talc,</p> <p>10 not talc flakes.</p> <p>11 BY MR. DUBIN:</p> <p>12 Q. And anything else?</p> <p>13 A. No.</p> <p>14 Q. Okay. The refractive index of</p> <p>15 elongated talc or a talc fiber in parallel is</p> <p>16 similar to the refractive index of the talc</p> <p>17 plate, correct?</p> <p>18 MS. O'DELL: Calls for an</p> <p>19 expert opinion; beyond the scope of this</p> <p>20 deposition. I --</p> <p>21 MR. LUDWIG: And I join and</p> <p>22 instruct him not to answer.</p> <p>23 MR. DUBIN: I am asking him</p> <p>24 about what he just testified about, the</p> <p>25 explanation that he just testified about, and</p>	<p style="text-align: right;">Page 156</p> <p>1 material.</p> <p>2 Q. First, who -- at some point were you</p> <p>3 examining Johnson & Johnson using 1.550 oil,</p> <p>4 but not reporting chrysotile?</p> <p>5 MS. O'DELL: I'm sorry. I</p> <p>6 missed the last part of that question. Would</p> <p>7 you mind repeating it?</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. At some point in time were you</p> <p>10 analyzing Johnson & Johnson talc using 1.550,</p> <p>11 but not reporting chrysotile?</p> <p>12 MS. O'DELL: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: I don't recall.</p> <p>15 MR. DUBIN: Again, but for the</p> <p>16 Court's ruling, I would be asking now, along</p> <p>17 those lines -- and I will just accept the --</p> <p>18 make the objections. Because we're going to</p> <p>19 have to bring this up.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. You did a report -- you looked at</p> <p>22 about 70-something samples of Johnson &</p> <p>23 Johnson related talc using 1.550 oil and</p> <p>24 reported chrysotile in none of the samples at</p> <p>25 some point; isn't that right?</p>
<p style="text-align: right;">Page 155</p> <p>1 you're instructing him not to answer.</p> <p>2 Is that -- is that actually</p> <p>3 happening? Because -- are you instructing him</p> <p>4 not to answer that question?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. The reason these are yellow and</p> <p>9 orange -- these are all orange and gold is</p> <p>10 because you have got a tungsten light shining</p> <p>11 on them, right?</p> <p>12 MS. O'DELL: Objection.</p> <p>13 MR. PLACITELLA: I object to</p> <p>14 your testimony, Morty.</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. Is that correct?</p> <p>17 MS. O'DELL: Same objection;</p> <p>18 misstates the evidence.</p> <p>19 THE WITNESS: That is correct.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. So you're saying Calidria -- when</p> <p>22 did you first -- what is your view that</p> <p>23 Calidria asbestos in parallel can be yellow</p> <p>24 gold based on?</p> <p>25 A. Experience examining the Calidria</p>	<p style="text-align: right;">Page 157</p> <p>1 MS. O'DELL: That is -- that is</p> <p>2 direct --</p> <p>3 MR. DUBIN: Okay. I --</p> <p>4 MS. O'DELL: -- in --</p> <p>5 MR. DUBIN: -- that you're</p> <p>6 going to object to it. I just want the</p> <p>7 question on the record because we're going</p> <p>8 to -- I want to -- we're going to take this at</p> <p>9 issue.</p> <p>10 So I understand. You can</p> <p>11 object per the Court and instruct him not to</p> <p>12 answer.</p> <p>13 MR. LUDWIG: I instruct him not</p> <p>14 to answer.</p> <p>15 I do have a question for you,</p> <p>16 Mr. Dubin. Are you done with this image?</p> <p>17 Because the --</p> <p>18 MR. DUBIN: I will take it</p> <p>19 down; that's fine.</p> <p>20 MR. LUDWIG: I just don't know.</p> <p>21 Because I see Paul straining to watch you;</p> <p>22 that's why I asked.</p> <p>23 MR. DUBIN: Uh-huh.</p> <p>24 BY MR. DUBIN:</p> <p>25 Q. So at some point you decide to use</p>

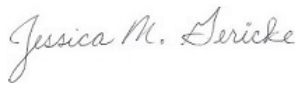
<p style="text-align: right;">Page 158</p> <p>1 Calidria as a reference. 2 Whose idea was that at MAS? 3 A. As I recall, it was a collaborative 4 effort between Dr. Longo and myself. 5 Q. But who first suggested using 6 Calidria as a reference? 7 A. That I do not recall. 8 Q. Okay. When is the first time you 9 recall ever looking at Calidria by PLM 10 dispersion staining analysis? 11 A. I don't recall when that was either. 12 Q. But do you recall even generally? 13 Like, what -- was it within the last ten 14 years? Five years? Before that? 15 A. Within the last five. 16 Q. Did you ever participate in any 17 NVLAP proficiency testing related to Calidria? 18 A. No. 19 Q. So the whole reason why dispersion 20 staining can be used is because minerals have 21 defined refractive indices, right? 22 MR. LUDWIG: That calls for 23 expert testimony, objection. 24 I instruct you not to answer. 25 MS. O'DELL: Join.</p>	<p style="text-align: right;">Page 160</p> <p>1 BY MR. DUBIN: 2 Q. We saw in the Zimmerman image that 3 your talc could appear golden yellow, right? 4 MS. O'DELL: Object to the 5 form. 6 It's not his talc. It's 7 Johnson & Johnson talc. 8 BY MR. DUBIN: 9 Q. Your images of talc can appear 10 golden yellow, right? 11 A. Off the -- the Olympus BH2, yes. 12 Q. So if both -- if in your view both 13 Calidria and talc can show golden yellow in 14 parallel, how are you distinguishing between 15 them? 16 MS. O'DELL: Objection to the 17 form. 18 THE WITNESS: By whether I am 19 actually looking at fibrous talc or talc 20 plates. 21 BY MR. DUBIN: 22 Q. But your elongated talc -- now, 23 first of all, do you have any -- do you have 24 images -- what is your practice about imaging 25 when you do a review? Do you always take</p>
<p style="text-align: right;">Page 159</p> <p>1 BY MR. DUBIN: 2 Q. Why -- how is it that you can use 3 PLM to identify minerals by dispersion 4 staining? What property is it that allows you 5 to do that? 6 A. The refraction angle between 7 particle and oil creates a color that we can 8 use then to try to identify wavelength based 9 on temperature and the version of oil that's 10 been used. 11 Q. No question, if I look at Calidria 12 in 1.550, I can see generally magenta in 13 parallel and blue in perpendicular, right? 14 A. I have seen that in my experience. 15 Q. Okay. So how is it in your view 16 that somehow Calidria is also showing golden 17 yellow? What physical -- what property of 18 physics changes it so that sometimes when 19 you're finding it, it's to you golden yellow 20 as opposed to magenta? 21 MR. LUDWIG: Objection, same 22 objection. 23 I instruct you not to answer. 24 Calls for expert testimony. 25 MS. O'DELL: Join.</p>	<p style="text-align: right;">Page 161</p> <p>1 images? 2 A. If we find a structure of interest. 3 Q. Do you do that both when you're 4 looking for fibrous talc and when you're 5 looking for chrysotile? You take images? 6 A. If I find something that I feel 7 comfortable calling fibrous talc, yes. 8 Q. Do you have images -- we'll go back 9 and do that. 10 So my understanding is that 11 you're trying to say that even with the 12 tungsten light shining on the particles, talc 13 plates are going to be golden yellow, but what 14 you're calling fibrous talc is going to be 15 still bright yellow or pale yellow even -- 16 MS. O'DELL: Objection. 17 BY MR. DUBIN: 18 Q. -- is that what you're saying? 19 MS. O'DELL: I'm sorry. 20 Objection; misstates his testimony. 21 BY MR. DUBIN: 22 Q. I mean, wouldn't the fibrous talc 23 also have the same color as the talc in 24 parallel? 25 MS. O'DELL: Object to the</p>

<p style="text-align: right;">Page 162</p> <p>1 form.</p> <p>2 THE WITNESS: Not in my</p> <p>3 experience have I seen that.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. Are you familiar with any published</p> <p>6 reference values for the refractive indices of</p> <p>7 talc in parallel, in talc -- elongated fiber</p> <p>8 of talc in parallel?</p> <p>9 MS. O'DELL: Objection; calls</p> <p>10 for expert testimony; beyond the scope of the</p> <p>11 work he has done in this -- in these reports.</p> <p>12 MR. LUDWIG: I join and I</p> <p>13 instruct him not to answer.</p> <p>14 MR. DUBIN: Okay. And just one</p> <p>15 more time, for purposes of the record, all of</p> <p>16 this is going to his knowledge, experience,</p> <p>17 and training and how he has formulated the</p> <p>18 opinions that he has stated in these reports</p> <p>19 and I am being prevented from asking these</p> <p>20 questions. We're going to go to the Court</p> <p>21 about it, but I am going to keep going for a</p> <p>22 little while so that we make clear what you</p> <p>23 are objecting to or not.</p> <p>24 MS. O'DELL: There is a</p> <p>25 difference between asking about the work he</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Sure. Did you review -- as part of</p> <p>2 using Calidria as a standard for your</p> <p>3 analysis, did you review any MAS historical</p> <p>4 analysis of Calidria and its dispersion</p> <p>5 staining colors?</p> <p>6 A. I am not aware of anything like</p> <p>7 that, no.</p> <p>8 MR. DUBIN: Okay. Jake, I</p> <p>9 don't have the number, but let's just call up</p> <p>10 the historical MAS analysis as the next</p> <p>11 exhibit. It should be around 132 or 133 of</p> <p>12 the outline and it will be exhibit 24.</p> <p>13 (Exhibit 24 marked for</p> <p>14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. Were you aware that MAS had recorded</p> <p>17 previously their refractive indices associated</p> <p>18 with Calidria asbestos?</p> <p>19 MS. O'DELL: I object to --</p> <p>20 first, object to the use of this exhibit.</p> <p>21 It's not been disclosed in the MDL, it's not</p> <p>22 something that this witness should be asked</p> <p>23 about, but I would -- I would encourage</p> <p>24 counsel to instruct him not to answer. This</p> <p>25 is beyond the scope.</p>
<p style="text-align: right;">Page 163</p> <p>1 has done for these particular reports and</p> <p>2 asking about methodology for things he hasn't</p> <p>3 done and goes into expert opinion and that's</p> <p>4 what we're basing our objections. It's</p> <p>5 clearly within the scope of Judge Schneider's</p> <p>6 order.</p> <p>7 MR. DUBIN: Okay. Well, we</p> <p>8 have done that. We'll do this at the end.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. You were never told at McCrone when</p> <p>11 you were doing your PLM training that somehow</p> <p>12 Calidria could not be identified by the</p> <p>13 standard colors associated with chrysotile;</p> <p>14 right? No one said that to you, correct?</p> <p>15 A. Nothing was mentioned about Calidria</p> <p>16 during the course.</p> <p>17 Q. Do you know whether Calidria is</p> <p>18 mentioned in ISO 22262?</p> <p>19 A. I am not aware of that.</p> <p>20 Q. Okay. Have you reviewed -- as part</p> <p>21 of familiarizing yourself with Calidria for</p> <p>22 purposes of using it as a standard, did you</p> <p>23 review any historical MAS analysis of Calidria</p> <p>24 by dispersion staining?</p> <p>25 A. Would you, please, rephrase that?</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. LUDWIG: I was going to.</p> <p>2 This is totally beyond the scope of what the</p> <p>3 Judge said. So I am objecting to the question</p> <p>4 and I am instructing my client not to answer.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Okay. So you don't know whether at</p> <p>7 MAS, before they tried to claim that there was</p> <p>8 chrysotile in Johnson & Johnson, they reported</p> <p>9 that Calidria would look magenta in parallel</p> <p>10 and blue in perpendicular.</p> <p>11 You're not aware of that?</p> <p>12 MS. O'DELL: Objection to the</p> <p>13 statements of counsel testifying, objection to</p> <p>14 the representations about this document we</p> <p>15 have never seen, and it is beyond the scope of</p> <p>16 this deposition.</p> <p>17 MR. DUBIN: Okay.</p> <p>18 MR. LUDWIG: I join the</p> <p>19 objection.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. You were using Calidria as your</p> <p>22 reference in the reports that we have been --</p> <p>23 that you have produced claiming to find</p> <p>24 chrysotile in Johnson & Johnson, correct?</p> <p>25 MS. O'DELL: Objection.</p>

<p style="text-align: right;">Page 166</p> <p>1 MR. LUDWIG: Objection; 2 argumentative. 3 BY MR. DUBIN: 4 Q. Is that correct? 5 MS. O'DELL: Restate your 6 question. 7 BY MR. DUBIN: 8 Q. You were using Calidria asbestos as 9 the reference material for chrysotile with 10 respect to the reports that you have issued 11 claiming to find chrysotile in Johnson & 12 Johnson, correct? 13 MR. LUDWIG: Objection to the 14 form. 15 MS. O'DELL: Object to the 16 form. 17 THE WITNESS: We had not used 18 the Calidria to -- the only way we have used 19 the Calidria is to create standards in order 20 to calibrate for levels of concentration. 21 BY MR. DUBIN: 22 Q. I'm sorry. You're using it only to 23 calibrate levels of concentration. 24 What do you mean by that? 25 A. I mean by what might be visually</p>	<p style="text-align: right;">Page 168</p> <p>1 Johnson, are you reporting based on seeing the 2 actual particle being magenta in parallel? 3 A. I am reporting based on the colors I 4 see at the edge. 5 Q. Does the actual particle itself, 6 where you see the main color, is that ever 7 magenta itself? 8 MS. O'DELL: Would you repeat 9 the question, please? 10 BY MR. DUBIN: 11 Q. In the main center of the particle, 12 not these edge effects, do you recall ever 13 reporting it as the main color being magenta 14 itself, not the edge? 15 A. I have seen that, yes. 16 Q. Can you identify any report or any 17 image where you have seen the interior of 18 the -- what you're calling chrysotile in 19 Johnson & Johnson being magenta, any image, 20 any report? 21 A. I do not recall. 22 Q. I want to ask you a little bit about 23 your reference images of Calidria in 1.560 24 and -- 25 MR. PLACITELLA: Could you</p>
<p style="text-align: right;">Page 167</p> <p>1 apparent within a set of standards. 2 Q. But you would agree that what you're 3 identifying as chrysotile in Johnson & Johnson 4 does not look like standard reference 5 chrysotile, correct? 6 It does not have the magenta in 7 parallel and blue in perpendicular associated 8 with standard reference Chrysotile, correct? 9 MS. O'DELL: Objection; 10 misstates the record; calls for expert 11 opinion. 12 MR. LUDWIG: Join. I instruct 13 the witness not to answer. 14 MR. DUBIN: So you're 15 instructing him not to answer about the colors 16 that he is seeing in the analysis that this 17 whole deposition is about? Is that my -- is 18 that right? 19 MS. O'DELL: That's not 20 correct. 21 MR. LUDWIG: I am instructing 22 him not to answer the question as asked. 23 BY MR. DUBIN: 24 Q. What -- are you reporting -- when 25 you're reporting chrysotile in Johnson &</p>	<p style="text-align: right;">Page 169</p> <p>1 just, please, define your reference images, 2 please? Thank you. 3 MR. DUBIN: The reference 4 images that he created on the PLM that are 5 part of Dr. Longo's reports. 6 MR. PLACITELLA: Thank you. 7 MS. O'DELL: Which reports? 8 MR. DUBIN: I am about to mark 9 it, but I got interrupted. All right. So -- 10 MR. PLACITELLA: I wasn't 11 objecting. I was just asking. 12 MR. DUBIN: So we'll mark 13 CX-00029 or CX-29 as the next exhibit. I 14 guess we're at 25. 15 (Exhibit 25 marked for 16 identification.) 17 MR. DUBIN: If we can turn that 18 a little bit? 19 MS. O'DELL: And what report 20 did this image come from? 21 MR. DUBIN: Let's show the 22 front of the report, too, if we have it. It's 23 from the (inaudible). 24 MR. KEESTER: Morty, I don't 25 have the first page of this report. I can go</p>

<p style="text-align: right;">Page 170</p> <p>1 find it if need be.</p> <p>2 MR. DUBIN: Okay. Well, let's</p> <p>3 make sure that we mark it as an exhibit so</p> <p>4 they have the entire report. The full report</p> <p>5 will be 26.</p> <p>6 MS. O'DELL: I want to make</p> <p>7 sure that this report is at issue in the MDL.</p> <p>8 Can you represent to me which report this</p> <p>9 image came from?</p> <p>10 MR. DUBIN: These are all of</p> <p>11 the reference images that Dr. Longo provides</p> <p>12 along with all of these reports as his</p> <p>13 references for his chrysotile findings. These</p> <p>14 are all part of his analysis in -- it's all</p> <p>15 part of the chrysotile analysis that is being</p> <p>16 discussed in these -- in this deposition.</p> <p>17 MS. O'DELL: With due respect,</p> <p>18 Morty, that doesn't mean anything. I mean,</p> <p>19 the question is, is -- is this --</p> <p>20 MR. DUBIN: Dr. Longo is</p> <p>21 relying on these reference images for his</p> <p>22 identification of chrysotile in the reports</p> <p>23 that we are discussing today.</p> <p>24 MS. O'DELL: And I am asking</p> <p>25 you what report does this image come from?</p>	<p style="text-align: right;">Page 172</p> <p>1 Calidria to say there is chrysotile in Johnson</p> <p>2 & Johnson as part of this analysis are somehow</p> <p>3 off limits, but if you're going to take that</p> <p>4 position, you're going to take that position.</p> <p>5 MS. O'DELL: I'm not --</p> <p>6 MR. DUBIN: We'll take --</p> <p>7 MS. O'DELL: -- the position I</p> <p>8 am taking is that you have an image on the</p> <p>9 screen. We have --</p> <p>10 MR. DUBIN: Okay.</p> <p>11 MS. O'DELL: -- no idea where</p> <p>12 it came from --</p> <p>13 MR. DUBIN: (Inaudible.)</p> <p>14 MS. O'DELL: (Inaudible.)</p> <p>15 THE COURT REPORTER: I'm sorry.</p> <p>16 This is the court reporter. Everyone is</p> <p>17 talking at once and I can't hear anything.</p> <p>18 Apologies.</p> <p>19 MS. O'DELL: Jessica, I'm</p> <p>20 sorry. I mean, I am just trying to finish my</p> <p>21 objection.</p> <p>22 We have no idea where this</p> <p>23 image came from. I am just asking -- you're</p> <p>24 saying it's a reference image from Dr. Longo.</p> <p>25 I have no idea of the context and we --</p>
<p style="text-align: right;">Page 171</p> <p>1 That's what I am asking you.</p> <p>2 MR. DUBIN: I will tell you the</p> <p>3 name of the report, but it will be one of</p> <p>4 Dr. Longo's reference image reports that he</p> <p>5 supplies along with the chrysotile finding --</p> <p>6 alleged chrysotile findings from Johnson &</p> <p>7 Johnson.</p> <p>8 MS. O'DELL: Well --</p> <p>9 MR. DUBIN: (Inaudible.)</p> <p>10 MS. O'DELL: -- comes from</p> <p>11 without knowing if it's at issue in the MDL --</p> <p>12 MR. DUBIN: It is at issue in</p> <p>13 the MDL because they are his reference images</p> <p>14 that he is using to compare reference</p> <p>15 chrysotile to the reports that he has produced</p> <p>16 in the MDL. These are his reference images</p> <p>17 that are incorporated in all of his materials.</p> <p>18 MS. O'DELL: I don't --</p> <p>19 MR. DUBIN: Okay. We can take</p> <p>20 a ten-minute break. We'll get the whole</p> <p>21 report and then if you want to still instruct</p> <p>22 him not to answer, then we'll just add it to</p> <p>23 the pile of things, but I really can't see how</p> <p>24 any legitimate argument could be made that the</p> <p>25 reference images that they are relying on for</p>	<p style="text-align: right;">Page 173</p> <p>1 MR. DUBIN: (Inaudible.)</p> <p>2 MS. O'DELL: -- know that</p> <p>3 before the --</p> <p>4 MR. DUBIN: I am telling you</p> <p>5 what the context is now. Because apparently</p> <p>6 he produces them as individual images. He</p> <p>7 doesn't produce them as part of a report, but</p> <p>8 when he is requested to produce the reference</p> <p>9 images that he is relying on to use as a</p> <p>10 reference for chrysotile in 1.560, he just</p> <p>11 produces these images as the standards that he</p> <p>12 is relying on.</p> <p>13 So it's part of the materials</p> <p>14 that he relies on for these reports and his</p> <p>15 conclusions about the chrysotile -- alleged</p> <p>16 chrysotile in Johnson & Johnson.</p> <p>17 MR. PLACITELLA: I hear you --</p> <p>18 I hear you, Morty, but you're not deposing</p> <p>19 Dr. Longo here.</p> <p>20 MR. DUBIN: But these are</p> <p>21 images taken by Mr. Hess.</p> <p>22 MS. O'DELL: Well, and to my</p> <p>23 knowledge -- and I can be corrected on this,</p> <p>24 Morty, but this is not an image that's been</p> <p>25 produced in the MDL in relation to Dr. Longo's</p>

<p style="text-align: right;">Page 174</p> <p>1 testimony.</p> <p>2 MR. DUBIN: I am sure he has</p> <p>3 produced his reference images because he</p> <p>4 always produces his reference images because</p> <p>5 we always request his reference images.</p> <p>6 If you really are going to shut</p> <p>7 me down from asking a question about the</p> <p>8 reference images that were -- that are relied</p> <p>9 on for the reports in this case, then you're</p> <p>10 going -- you're going to do that. You're</p> <p>11 going to make the objection and we're going to</p> <p>12 go and argue about it and I think it is highly</p> <p>13 improper or you could let me ask him a</p> <p>14 question about an image that directly relates</p> <p>15 to his work and that he took.</p> <p>16 MS. O'DELL: Well, we don't</p> <p>17 have -- one, there is no evidence of that and</p> <p>18 second is Mr. Hess is here to testify on the</p> <p>19 reports that are produced in the MDL. Other</p> <p>20 things that Dr. Longo relies on are not at</p> <p>21 issue here for his opinions. So --</p> <p>22 MR. DUBIN: These are the --</p> <p>23 again, these are the images that Dr. Longo</p> <p>24 uses with his reports and the whole purpose of</p> <p>25 this is to ask the person who took the images</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. LUDWIG: And I am going to</p> <p>2 join for the reasons stated and instruct the</p> <p>3 witness not to answer.</p> <p>4 MR. DUBIN: We're going to take</p> <p>5 a ten-minute break. I'll be back.</p> <p>6 VIDEOGRAPHER: The time is</p> <p>7 2:12 p.m. We are off the record.</p> <p>8 (Break held off the record.)</p> <p>9 VIDEOGRAPHER: The time is</p> <p>10 2:26 p.m. We are back on the record.</p> <p>11 MR. DUBIN: So for the record,</p> <p>12 I am going to mark as 26 Dr. Longo's</p> <p>13 deposition in a case called Kayme Clark and</p> <p>14 Dusty Clark v. Johnson & Johnson, where he</p> <p>15 identifies these reference images so that it's</p> <p>16 in the record. We'll put that in as 26. We</p> <p>17 don't have to do anything with it. We're just</p> <p>18 going to put it in the record.</p> <p>19 (Exhibit 26 marked for</p> <p>20 identification.)</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. And then I am going to go back to</p> <p>23 the image and I am going to ask you some</p> <p>24 questions and if you're instructed not to</p> <p>25 answer, you are instructed not to answer.</p>
<p style="text-align: right;">Page 175</p> <p>1 about them.</p> <p>2 I am not going to continue to</p> <p>3 argue with you. If you're going to instruct</p> <p>4 the witness not to answer, go ahead and do it,</p> <p>5 because I think that this deposition has gone</p> <p>6 way off the rails and we're going to have to</p> <p>7 go to the Judge about it. So just do whatever</p> <p>8 you're going to do. I don't want to argue</p> <p>9 with you anymore.</p> <p>10 Are you claiming that you are</p> <p>11 going to stop this person, Mr. Hess, from</p> <p>12 talking about the reference images for the</p> <p>13 alleged chrysotile in Johnson & Johnson? If</p> <p>14 so, instruct him, and let's just have that</p> <p>15 done.</p> <p>16 MS. O'DELL: Judge Schneider</p> <p>17 was very clear as to what was fair game in</p> <p>18 this deposition and those are the reports</p> <p>19 produced in the MDL that involve the new</p> <p>20 method, to my knowledge. And you can correct</p> <p>21 me, but I don't think I am incorrect.</p> <p>22 This is not a part of those</p> <p>23 reports and it's not something that's an</p> <p>24 appropriate scope of this deposition and we</p> <p>25 would instruct the witness not to answer.</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. DUBIN: So can we pull back</p> <p>2 up the Calidria reference image? And I don't</p> <p>3 think that was the page we were on; that was</p> <p>4 one of them.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. So is this an image that is -- are</p> <p>7 these your PLM images of Calidria 1.560?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And so all this blue stuff in</p> <p>10 the background, that's Calidria?</p> <p>11 A. That is correct.</p> <p>12 Q. Okay. And you're aware that</p> <p>13 Calidria can have impurities in it, too?</p> <p>14 MR. LUDWIG: That's -- I am</p> <p>15 going to object to the form and instruct him</p> <p>16 not to answer; that's beyond the scope.</p> <p>17 MR. DUBIN: Okay.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. Is this image taken at maximum</p> <p>20 illumination?</p> <p>21 A. It was.</p> <p>22 Q. All right. So images on that</p> <p>23 microscope don't get any brighter than this?</p> <p>24 MS. O'DELL: Objection; asked</p> <p>25 and answered.</p>

<p style="text-align: right;">Page 178</p> <p>1 MR. LUDWIG: Join.</p> <p>2 MR. DUBIN: All right. Let's</p> <p>3 make the next exhibit in order, which is 27,</p> <p>4 we'll make it slide 61 -- sorry -- actually,</p> <p>5 slide 95.</p> <p>6 (Exhibit 27 marked for</p> <p>7 identification.)</p> <p>8 MS. O'DELL: I'm sorry. Is</p> <p>9 this exhibit 27?</p> <p>10 MR. DUBIN: Twenty-seven.</p> <p>11 MR. LUDWIG: (Inaudible.)</p> <p>12 THE COURT REPORTER: If you</p> <p>13 just said something, Mr. Hess, I couldn't hear</p> <p>14 you.</p> <p>15 MR. LUDWIG: That was me</p> <p>16 talking to myself. I apologize, Jessica. I</p> <p>17 am simply saying that my exhibit list is</p> <p>18 mis-numbered for some reason.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Are you claiming those two -- those</p> <p>21 two images have the same dispersion staining</p> <p>22 colors?</p> <p>23 MR. LUDWIG: I am going to</p> <p>24 object to the form of the question.</p> <p>25 MS. O'DELL: I object to the</p>	<p style="text-align: right;">Page 180</p> <p>1 objections as made have been proper and</p> <p>2 absolutely consistent with Judge Schneider's</p> <p>3 prior ruling and I will object to any further</p> <p>4 deposition of Mr. Hess.</p> <p>5 MR. DUBIN: Okay. We'll have</p> <p>6 to resolve that. All right. Thanks for</p> <p>7 today. Take care.</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 2:31 p.m. We're off the record.</p> <p>10 (Witness was excused.)</p> <p>11 (Deposition concluded at</p> <p>12 2:31 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 179</p> <p>1 question.</p> <p>2 MR. LUDWIG: Yeah.</p> <p>3 MS. O'DELL: This is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Yes. This is</p> <p>7 beyond the scope.</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. Have you ever received any criticism</p> <p>10 from NVLAP about your PLM work?</p> <p>11 A. None that I am aware of.</p> <p>12 MR. DUBIN: Okay. At this</p> <p>13 point, you know, I think we're going to have</p> <p>14 to go to the Court. I am going to shut the</p> <p>15 deposition down for the day, but I am not</p> <p>16 agreeing to end it. I think that the</p> <p>17 restrictions that have been placed on me by</p> <p>18 counsels' objections and instructions not to</p> <p>19 answer are improper and we're going to seek</p> <p>20 relief with the Court.</p> <p>21 So I am suspending it for the</p> <p>22 day because I think I am handcuffed, but I</p> <p>23 understand you guys have different opinions.</p> <p>24 So we'll just have to deal with it later.</p> <p>25 MS. O'DELL: Our view is the</p>	<p style="text-align: right;">Page 181</p> <p>1 C E R T I F I C A T E</p> <p>2 I HEREBY CERTIFY that prior to the</p> <p>3 commencement of the examination, PAUL HESS,</p> <p>4 was remotely sworn by me to testify to the</p> <p>5 truth and that the proceedings, evidence, and</p> <p>6 objections are contained fully and accurately</p> <p>7 in the stenographic notes taken by me upon the</p> <p>8 deposition taken on July 10, 2024, and this is</p> <p>9 a true and correct transcript of same.</p> <p>10</p> <p>11</p> <p>12 </p> <p>13</p> <p>14 Jessica M. Gericke, RPR, CCR-NJ,</p> <p>and Notary Public</p> <p>15</p> <p>16</p> <p>17 (The foregoing certification of this</p> <p>18 transcript does not apply to any reproduction</p> <p>19 of the same by any means, unless under the</p> <p>20 direct control and/or supervision of the</p> <p>21 certifying reporter.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 182

1 I have read the foregoing transcript
2 of my deposition given on July 10, 2024, and
3 it is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon and/or
6 list of corrections, if any, attached on a
7 separate sheet herewith.

8

9

Paul Hess

10

11

12

13

14 Subscribed and sworn to

15 before me this ____ day

16 of _____, 20__

17

18

19

20 Notary Public

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22

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Page 183

1 ERRATA SHEET

2

3 PAGE LINE CHANGES OR CORRECTION AND REASON

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18

19

20 I have inspected and read my deposition as

captioned above and have listed all changes

21 and corrections above, along with my reasons

therefor.

22

23 DATE: ____

24 Signature of Deponent: _____

25

47 (Pages 182 - 183)